ACCESS TO JUSTICE IN THE UNITED NATIONS HUMAN RIGHTS COMMITTEE

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Abstract: This article uses the United Nations Human Rights Committee as a case study for the success of the of individual communications system in international law. The article uses a mixed methods empirical research strategy in order to describe and evaluate the access to justice in the context of the Committee. I find that most of the communications to the Committee come from democratic and socio-economically developed countries. The main problems with the accessibility of the Committee are lack of awareness to its existence, fear from state retribution, budgetary problems within the UN, and lack of implementation by states. However, the process is generally perceived as fair, and the Committee is accessible to certain degree even to applicants without legal representation. Finally, the article also discusses what could be done in order to make the system more accessible to people from all over the world.

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INTRODUCTION

The idea that certain universal human rights exist began already in the 18th century, or even earlier by some accounts.[1] However, the ability of individuals to access international institutions in order to demand the implementation of those rights was far from obvious, and human rights have been traditionally seen as part of the internal affairs of a state.[2] Granting individuals access to international institutions in order to file complaints against their own states was seen as a major development in international human rights law after World War II.[3] Although there is probably no customary international right of individuals to access international instances in each and every case,[4] some international and regional human rights treaties have granted individuals standing before international institutions. The first permanent supra-national institution to which individuals could file communications against their countries was the European Commission of Human Rights in 1954.[5] Currently, there are more than twenty international courts in which individuals have standing, and even more quasi-judicial bodies.[6]

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[1] Dan Edelstein, *Enlightenment Rights Talk,* 86 J. OF MODERN HIST. 530 (2014) (discussing the contribution of 18th century philosophers to the development of the idea of natural rights and human rights).

[2] Louis Henkin, *Human Rights and State "Sovereignty"*, 25 GA. J. INT'L & COMP. L. 31 (1996) (discussing hoe the concept of state sovereignty has changed because of the horrors of World War II). *See also* KATE PARLETT, THE INDIVIDUAL IN THE INTERNATIONAL LEGAL SYSTEM–CONTINUITY AND CHANGE IN INTERNATIONAL LAW 65-83 (2011) (arguing that even prior to 1945 there were certain *ad hoc* arrangements for individuals to access international institutions to bring claims against states which were not their states of nationality).

[3] PARLETT, *supra* note 2, at 3 & 27.

[4] Francesco Francioni, *The Rights of Access to Justice under Customary International Law, in* ACCESS TO JUSTICE AS A HUMAN RIGHT 1, 8 (Francesco Francioni eds., 2007) (arguing that it is hard to defend a position according to which a customary international norm emerged, according to which individuals should always have recourse to an international institution).

[5] Patrick Keyzer, Vesselin Popovski & Charles Sampford, *What is 'Access to Justice' and What Does it Require? in* ACCESS TO INTERNATIONAL JUSTICE 1, 3 (Patrick Keyzer, Vesselin Popovski & Charles Sampford eds., 2015). Following the establishment of the European Commission, the European Court of human Rights was established in 1959 (however, individuals were granted direct access to it only in 1998). Following the model of the European regional system, the American and African regions also established regional human rights systems. The Inter-American region established the Human Rights Commission in 1959 and a Court in 1979, and the African region established a Commission in 1987 and a Court in 1998. In the Inter-American Court individuals still have standing only via the Commission, and in the African Court individuals have standing only if states explicitly agreed to that.

[6] Karen J. Alter, *Private Litigants and the New International Courts*, 39 COMP. POL. STUD. 22, 43 (2006).

Even though with time there seems to be an increase in the number of international institutions granting individuals a right to access them, there is serious gap in the empirical literature about the actual usage of this right. For instance, there is almost no empirical research on questions such as–who are the main beneficiaries of the right in practice, what are the main difficulties individuals face with accessing international justice, and what can be done in order to make international institutions more accessible to people from all over the world.[7]

This article uses the individual petitions system under the First Optional Protocol (OP)[8] to the International Covenant on Civil and Political Rights (ICCPR)[9] as a case study in order to shed some light on the actual practice of the right to access international justice. The United Nations Human Rights Committee (HRC), the treaty body responsible for overseeing the implementation of the ICCPR, is of special interest to researchers since it is a high profile and internationally acclaimed quasi-judicial body

[7] Contrary to the international legal system, there is a wide literature on the subject of access to justice in national jurisdictions. Laura K. Abel, *A Right to Counsel in Civil Cases: Lessons From Gideon v. Wainwright*, 15 TEMP. POL. & CIV. RTS. L. REV. 527 (2005) discussing how the vast majority of low-income people in the United States are not able to exercise their right to a meaningful day in court); James E. Cabral et al., *Using Technology to Enhance Access to Justice*, 26 HARV. J.L. & TECH. 243 (2012) (assessing how technology improved access to justice in the United States); Mauro Cappeletti, *Alternative Dispute Resolution Processes within the Framework of the World-Wide Access-to-Justice Movement*, 56 MOD. L. REV. 282 (1993) (discussing alternative dispute resolution as a channel of accessing justice); Brian Etherington, *Promises, Promises: Notes on Diversity and Access to Justice*, 26 QUEEN'S L.J. 43 (2000) (arguing that channeling litigation towards alternative dispute resolution mechanisms has in fact decreased the access to justice of diversity groups in Canada). For literature on access to justice in jurisdictions other than the United States *see*, Mauro Cappelletti & Bryant Garth, *Access to Justice: The Newest Wave in the Worldwide Movement to Make Right Effective*, 27 BUFF. L. REV. 181 (1977) (discussing the emergence of the concept of "access to justice," and how it is interpreted in different jurisdictions); Matthieu Chemin, *The impact of the judiciary on entrepreneurship: Evaluation of Pakistan's "Access to Justice Programme"*, 93 J. PUB. ECON. 114 (evaluating how access to Justice increased in Pakistan following a reform in the judicial system); Patricia Hughes, *Law Commissions and Access to Justice: What Justice Should We be Talking About?*, 46 OSGOODE HALL L.J. 773 (2008) (arguing that, in the Canadian context, law commissions should have a wider perspective of the "access to justice" idea, and incorporate into their work insights of other disciplines and the experience of diverse communities); Earl Johnson, *Equal Access to Justice: Comparing Access to Justice in the United States and Other Industrial Democracies*, 24 FORDHAM INT'L L.J. 83 (2000) (conducting a comparative research about access to justice in the United States and other industrialized jurisdictions); Jayanth K. Krishnan, *Bread for the Poor: Access to Justice and the Rights of the Needy in India*, 55 HASTINGS L.J. 789 (2004) (discussing the access to justice of the poor in India) Matthias Killian, *Alternatives to Public Provision: The Role of Legal Expenses Insurance in Broadening Access to Justice: The German Experience*, 30 J.L. SOC'Y 31 (2003) (describing the German experience of promoting access to justice); A.A.S. Zuckerman, *Lord Woolf s Access to Justice: Plus ca change ...*, 59 MOD. L. REV. 773 (1996) (reviewing a report by Lord Wolf about the problems of Access to Justice in the United Kingdom).

[8] Optional Protocol to the International Covenant on Civil and Political Rights, March 23, 1976, 999 U.N.T.S.

[9] International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S 171.

that can receive individual communications against 115 states. Although over a billion people have been under the jurisdiction of the HRC since 1977,[10] as of March 2014, only 2,371 individual communications had been brought by petitioners. This single piece of data can in itself pose a grave doubt as to the success of the idea of access to international justice in the context of the HRC, or at least trigger further research into this question.

The current article has two main purposes. The first purpose is to describe and evaluate empirically the right of individuals to access the HRC under the OP, in light of the special goals of this procedure as perceived by the different stakeholders. The second purpose is to make recommendations on ways to improve the access of individuals to the HRC (and to international justice in general). In order to address the first question, the article uses a mixed methods approach–a combination of quantitative and qualitative research methods.

For the quantitative part of the research, I have constructed an original dataset of the number of the communications brought against different countries in a given year. Additionally, I coded the various political and socio-economic characteristics of those countries. This gives us a picture of who most often uses the individual communications mechanism, and what might be the main obstacles to filing communications to the HRC. I also coded whether individuals were represented in different communications, who represented them (private lawyers or NGOs), and whether representation increases the probability that the HRC finds a violation in the case.

For the qualitative part of the research I conducted interviews with 32 applicants, lawyers and NGOs that brought (or helped to bring) communications to the HRC. The interviewees were asked questions about their experiences with the process, their difficulties with it, and how they thought that the process could be made more accessible.

[10] Henry J. Steiner, *Individual Claims in a World of Massive Violations: What Roles for the Human Rights Committee? in* THE FUTURE OF UN HUMAN RIGHTS TREATY MONITORING 15, 15-17 (Philip Alston & James Crawford eds., 2000).

The article finds that there is a significant global inequality in accessing the HRC, since communications are much more likely to be filed against democratic countries with high socio-economic characteristics. Also, there seems to be a problem with the awareness of the possibility of filing individual communications. Another problem with the accessibility of the system is state intimidation of applicants who filed communications to the HRC, and also many procedural problems that stem from the fact that the secretariat (and the HRC itself) is very much under-funded. However, the system is widely perceived as fair, and most of the applicants would recommend others to file communications to the HRC. In order to make recommendations about increasing the accessibility of the HRC, I used both the empirical findings of this article, and recommendations about increasing access to justice which were discussed in the general literature on the subject.

The article proceeds as follows. Part I gives the theoretical background for the research. It introduces the concept of access to justice in the national and international context, and explains what is the United Nations Human Rights Committee and the OP. Part II explains the research question in detail and elaborates on the research methods used in this article. Part III constitutes the empirical part of the article–both the quantitative analysis of the dataset, and the analysis of the interviews. Finally, Part IV evaluates the success of the individual communications system and proposes possible reforms.

I. ACCESS TO JUSTICE

A. What is Access to Justice?

The discussion about the ability of individuals to access institutions in order to realize their legal rights started not from the international legal context, but rather from the national.[11] The basic assumption is that having certain rights does not ensure the implementation of those rights, and procedural guarantees are also needed. It is argued that equal justice to people should necessarily imply also equal access of people to the

[11] Aristotle saw a just society as one that "empowers and enables citizens to realize their virtue and take what they deserve. *See* Patrick Keyzer, Vesselin Popovski & Charles Sampford, *What is 'Access to Justice' and What does it Require? in* ACCESS TO INTERNATIONAL JUSTICE 1 (Patrick Keyzer, Vesselin Popovski & Charles Sampford eds., 2015). In more modern times, Martha Nussbaum addressed the idea that it is important to support the capability of people to address injustices. *See* MARTHA NUSSBAUM, FRONTIERS OF JUSTICE: DISABILITY, NATIONALITY, SPECIES MEMBERSHIP (2009).

justice system, and that procedural justice is one of the ways to attain social justice.[12] The term "access to justice" was originally defined as "[t]he system by which people may vindicate their rights and/or resolve their disputes under the general auspices of the state."[13] Access to justice is not limited to access to official courts, and includes a variety of legal institutions such as quasi-judicial institutions, administrative bodies, arbitration, and even tribal courts that apply local customary laws.[14]

Even though in recent years the main discussion in the context of access to justice has been about the financial possibility of people to bring a case before a court (or another legal institution), the problem is not only financial.[15] The term "access to justice" generally refers to the possibility of an individual to bring his case before a court and have a judicial procedure.[16] It also means that the individual has a right for his case to be adjudicated in a fair and just way.[17] This article focuses on the idea of access to justice in the broader sense–i.e., the evaluation of the possibility of an individual to bring his case before an institution, receive a fair process and a just decision that can be implemented on the national level.

Access to justice is seen as being of special importance to the weaker members of society, since the assumption is that others can protect their interests through alternative economic and political measures.[18] The marginalized members of society, on the other hand, lack the power and resources to guarantee their rights, and the courts

[12] Deborah Rhode, *Access to Justice: Connecting Principles to Practice,* 17 GEO. J. LEGAL ETHICS 369, 372 (2004).
[13] Maria Federica Moscati, *The Role of Transitional Justice and Access to Justice in Conflict Resolution and Democratic Advancement* (Democratic Progress Institute, May 2015), *available at*: http://www.democraticprogress.org/wp-content/uploads/2015/06/MOSCATI_TRANSITIONAL-JUSTICE-Proof.pdf.
[14] HAGUE INSTITUTE FOR THE INTERNATIONALISATION OF LAW (HIIL), TREND REPORT: TOWARDS BASIC JUSTICE CARE FOR EVERYONE–PART 1: CHALLENGES AND PROMISING APPROACHES 5, 8 & 17 (2012) [hereinafter *HiiL*]; UNDP COMMISSION ON LEGAL EMPOWERMENT OF THE POOR, MAKING THE LAW WORK FOR EVERYONE 25-27& 42-53 (2009); UNITED NATIONS DEVELOPMENT PROGRAM, PROGRAMMING FOR JUSTICE: ACCESS FOR ALL - A PRACTITIONER'S GUIDE TO A HUMAN RIGHTS-BASED APPROACH TO ACCESS TO JUSTICE 60-100 (2005) [hereinafter *UNDP 2005*];.
[15] Marc Galanter, *Access to Justice in a World of Expanding Social Capability*, 37 FORDHAM URB. LJ 115 (2010).
[16] Francini, *supra* note 4, at 1.
[17] *Id*.
[18] UNDP 2005, *supra* note 14, at 23.

are seen as having an important role in protecting their interests.[19] This is especially true for developing countries with fragile democracies and significant economic inequalities.[20] Despite that, research conducted in various national jurisdictions showed that many times the most vulnerable members of the society which need the protection of the courts the most, are in practice the ones to whom the courts are least accessible.[21] This is situation is referred to in the literature very often as the "access to justice gap."[22]

B. Access to Justice in International Law

There is much to be written and discussed about access of individuals to international courts and other institutions. However, since the methodology of the current research is not comparative, but rather using the HRC as a case study, this part will provide only a brief introduction to the subject. It will highlight the relevant points for understanding the general context and problems that individuals might face with accessing justice in the international sphere.

It is suggested in the literature that access of individuals to international judicial institutions is important because "private actors are more numerous and would appear especially likely to pursue cases that are either too politically "hot" or a low priority for international commissions or states with limited resources and conflicting priorities."[23] There seems to be a general agreement that individual access to international institutions serves two main purposes.[24] The first is providing the individual brining his

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[19] ROSIE WAGNER, THE RULE OF LAW AND THE POST-2015 DEVELOPMENT AGENDA 20 (2013) (arguing that access to justice can challenge existing distributions of power and resources).
[20] HIIL, *supra* note 14, at 28-29. *See also* Elizabeth L. MacDowell, *Reimagining Access to Justice in the Poor People's Courts*, 22 GEO. J. ON POVERTY L. & POL'Y 473 (2015) (discussing the importance of access to justice for the empowerment of marginalized groups in the national context).
[21] *Id.* The literature suggests two barriers that might be of special significance to marginalized groups. The first barrier is language–many times legal procedures and information about legal rights is available only in the language of the majority in the country. Also, geographical distance from different courts can sometimes be an obstacle, since it is burdensome and costly for individuals to come to a court to file a law suit and to participate in the procedures. *See* Martin Gramatikov, *A Framework for Measuring the Costs of Paths to Justice,* J. JURIS. 111, 118-19 (2008); HIIL, *supra* note 14, at 43; UNDP 2005, *supra* note 14, at 19; WAGNER, *supra* note 19, at 20.
[22] HIIL, *supra* note 14, at 28-29 & 39; UNDP 2005, *supra* note 14, at 3 & 6.
[23] *Id.* at 24.
[24] Lorna McGregor, *The Role of Supranational Human Rights Litigation in Strengthening Remedies for Torture Nationally*, 16 INT'L J. OF HUM. RTS. 737, 742 (2012).

case to an international institution with a remedy.[25] The second purpose is to promote change and develop jurisprudence on a specific subject matter.[26] It was also argued that a judgment of an international court has a symbolic value by highlighting the violations and individual suffering to an international audience,[27] and that it can serve as an anti-narrative to state violence.[28] Finally, it has been suggested that international courts can serve a function resembling that of truth-commissions,[29] or even that of constitutional courts.[30]

International institutions accessible to individuals have played a part in promoting the recognition and implementation of human rights, and promoting marginalized communities.[31] For instance, especially in the European context, supra-national litigation helped with promoting human rights of minorities, LGBT communities, torture victims, and social rights.[32] Also, in the context of the Inter-American system, the regional institutions helped promoting issues such as struggle against enforced disappearances and indigenous rights.[33] The Inter-American system might have also played a certain part in the struggle for democratizing the region, giving a platform for discourse on freedom of expression and non-discrimination.[34] However,

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[25] Freek van der Vet, *Holding on to Legalism: The Politics of Russian Litigation on Torture and Discrimination Before the European Court of Human Rights*, 23 SOC. & LEGAL STUD. 361, 362 (2014) [hereinafter van der Vet, *Holding on to Legalism*].
[26] *Id.*; McGregor, *supra* note 24, at 741.
[27] Basak Cali, *The Logics of Supranational Human Rights Litigation, Official Acknowledgment, and Human Rights Reform: The Southeast Turkey Cases before the European Court of Human Rights 1996-2006*, 35 LAW & SOC. INQUIRY 311 (2010).
[28] *Id.*
[29] Dia Anagnostou, *Does European human rights law matter? Implementation and domestic impact of Strasbourg Court judgments on minority-related policies*, 14 INT'L J. OF HUM. RTS. 721 (2010).
[30] Alter, *supra* note 6, at 22, 23 & 25 (2006) (arguing that international human rights courts usually play a role of constitutional courts for checks and balances, and are better able to induce state respect to international law).
[31] van der Vet, *Holding on to Legalism*, *supra* note 25, at 364; Vivek Maru, *Access to Justice and Legal Empowerment: A Review of World Bank Practice*, 2 HAGUE J. INT'L L. 259 (2015); WAGNER, *supra* note 19, at 21;
[32] *Id.* at 364; ; Lisa Conant, *Individuals, courts, and the development of European social rights*, 39 COMPARATIVE POLITICAL STUDIES 76 (2006); McGregor, *supra* note 24, at 739; van der Vet 2014, *supra* note 25, at 321.
[33] Conant, *supra* note 32; Thomas M. Antkowiak, Rights, *Resources, and Rhetoric: Indigenous Peoples and the Inter-American Court*, 35 PENN. J. INT'L L. 113 (2013).
[34] David C. Baluarte, *Strategizing For Compliance: The Evolution of a Compliance Phase of Inter-American Court Litigation and the Strategic Imperative For Victims' Representatives*, 27 AM. U. INT'L L. REV. 263, 320 (2012); Ariel Dulitzky, T*oo Little, Too Late: The Pace of Adjudication of the Inter-American Commission on Human Rights*, 35 LOY. L.A. INT'L & COMP. L. REV. 131, 131-33 (2012). *See also*

as would be discussed further, there is a serious problem with implementing the decisions of those institutions, and probably international institutions are more likely to influence domestic policies only after repeated litigation on the subject.[35]

Also, in the context of international litigation, NGOs are seen as important actors, and in some institutions they even have standing in their own right. Whereas in the African and Inter-American systems NGOs are involved in a variety of cases, in the European system NGOs are involved mainly in litigation against specific countries.[36] In the context of the European system in particular, it is generally regarded that NGOs file complaints of a higher quality than other litigants,[37] and help promoting marginalized groups that would not have had access to the international system otherwise.[38] NGOs engage in litigation both for the benefit of the specific applicants they represent, but also to promote awareness to widespread human rights violations.[39] There is a critique that in this sort of strategic litigation applicants are not selected for the value of the process to them as individuals, but for their relative possible contribution for the goal of the litigation.[40]

One of the major obstacles to accessing international justice is the lack of awareness to the possibility of filing cases and to the rights protected by human rights treaties.[41] In general, it seems that private enforcement through international legal mechanisms remains largely a European phenomenon.[42] The small number of cases filed to the African system is not representative of the problematic human rights

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PARLETT, *supra* note 2, at 3 (suggesting that access to justice has a potential to promote democratic processes and human development).

[35] Anagnostou, *supra* note 29, at 721.

[36] Lloyd Hitoshi Mayer, *NGO Standing and Influence in Regional Human Rights Courts and Commissions* 36 BROOK. J. INT'L L. 911, 913-14 & 937 (2010); Freek van der Vet, *Seeking Life, Finding Justice: Russian NGO Litigation and Chechen Disappearances before the European Court of Human Rights*, 13 HUM. RTS. REV. 303, 304 (2012) [hereinafter van der Vet, *Seeking Life, Finding Justice*]; van Der Vet, *Holding on to Legalism*, *supra* note 25, at 362.

[37] van der Vet, *Holding on to Legalism*, *supra* note 25, at 364.

[38] van der Vet, *Seeking Life, Finding Justice*, *supra* note 36, at 304

[39] *Id.*

[40] *Id.* at 315; van der Vet, *Holding on to Legalism*, *supra* note 25, at 371.

[41] Udeme Essien, *The African Commission on Human and Peoples' Rights: Eleven Years After*, 6 BUFF. HUM. RTS. L. REV. 93 (2000). For discussion of lack of awareness as a major barrier to accessing justice in the national context, *see* Gramatikov, *supra* note 21, at 118-19 (arguing that there is a general problem both regarding the awareness of the existence of substantial rights, as well as awareness to the possibility to solve the problem through a legal institution); HIIL, *supra* note 14, at 24-25 & 139; UNDP 2005, *supra* note 14, at 139.

[42] Alter, *supra* note 6, at 34.

situation in the region.[43] It was suggested that this inconsistency can be attributed to illiteracy and lack of awareness to the existence of the mechanism.[44] Whereas the African legal system has adjudicated only 285 cases since its establishment in 1988,[45] the European regional system has had in the year of 2015 alone 64,850 pending applications.[46]

Also, the different international mechanisms granting individuals access to them are not used equally by people from all relevant states. However, sometimes the filing patterns can be explained by factors such as the population of the state and the human rights situation in it. For instance, in the African region, most of the cases are filed against eight states–some can be explained by having a large population, and some for having internal conflicts.[47] In the European system, as of 2015, the following countries had the most cases pending against them: Ukraine, Russia and Turkey.[48] These states are both with a large population, and with a problematic human rights record compared to the region.

Another possible obstacle to accessing international institutions is the requirement to exhaust domestic remedies. The main idea is that the states as sovereigns are the ones responsible for implementing international human rights, and international institutions should intervene only if the states fail in correctly implementing those rights.[49] However, it seems that international institutions are quite lenient with applicants about exhaustion of domestic remedies in cases where it is clear that the domestic institutions will not be effective or independent.[50]

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[43] Daniel Abebe, *International Human Rights Law in Africa: Are Courts Effective?* VA. J. INT'L L. (forthcoming, 2017); GEORGE MUKUNDI WACHIRA, AFRICAN COURT ON HUMAN AND PEOPLES RIGHTS: TEN YEARS ON AND STILL NO JUSTICE 10-11 (2008).
[44] Udeme, *supra* note 41.
[45] Abebe, *supra* note 43, at 10.
[46] European Court of Human Rights, *Pending Applications Allocated to a Judicial Formation 31/12/2015* http://www.echr.coe.int/Documents/Stats_pending_2015_BIL.pdf (last visited Feb. 13, 2017).
[47] Abebe, *supra* note 43, at 13.
[48] European Court of Human Rights, *Analysis of Statistics 2015*, 8 http://www.echr.coe.int/Documents/Stats_analysis_2015_ENG.pdf (last visited Feb. 13, 2017).
[49] YOGESH TYAGI, THE UN HUMAN RIGHTS COMMITTEE 471 (2011); ANTONIA TRINDADE, THE ACCESS OF INDIVIDUALS TO INTERNATIONAL JUSTICE 100-07 (2011).
[50] Cali *supra* note 27, at 320; Juan E. Mendez & Jose Miguel Vivanco, *Disappearances and the Inter-American Court: Reflections on a Litigation Experience*, 13 HAMLINE L. REV. 538 (1990); McGregor,

In the national context, the need for legal representation is regarded as a major obstacle to accessing legal institutions. [51] Some international institutions are aware of the fact that this might be a problem, and therefore address it accordingly. For instance, in the European Court, the African Court and the Inter-American Commission, the applicants can apply for legal aid if they are unable to pay for their representation.[52] However, in the European and Inter-American systems, legal assistance is not granted from the beginning of the procedure, but rather only at later stages. On the other hand, in the African system, legal assistance is provided only for cases before the court, and not the commission.[53]

Finally, implementing decisions of international institutions seems to be a major problem in the international context.[54] In recent years, international institutions have been moving away from issuing merely declaratory orders, to issuing more specific orders.[55] However, states that do not respect human rights in general, are not likely to

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supra note 26, at 738-39. It should be noted that corruption in the legal system and the bureaucracy are also seen as a serious impediment for an individual to access a legal institution, have a fair procedure, and receive a just decision in his case. *See* HIIL, *supra* note 14, at 43; UNDP 2005, *supra* note 14, at 82 & 139.

[51] Gramatikov, *supra* note 41, at 117; UNDP 2005, *supra* note 14, at 139; UNITED NATIONS DEVELOPMENT PROGRAM, ACCESS TO JUSTICE 4 & 12 (2004); WAGNER, *supra* note 19, at 20; Mark Findlay, *International Criminal Trial and Access to Justice*, 2 INT'L CRIM. L. REV. 237, 250 (2002). *See also* Deborah L. Rhode, *Whatever Happened to Access to Justice*, 42 LOY. L.A. L. REV. 869 (2009) (discussing legal cost as a barrier to access to justice in national jurisdictions).

[52] European Court of Human Rights, Rules of Court, Rules 100-105, http://www.echr.coe.int/Documents/Rules_Court_ENG.pdf (last visited Feb. 13, 2015); Inter-American Commission on Human Rights, Rules of the Inter-American Commission on Human Rights on the Legal Assistance Fund of the Inter-American Human Rights System, http://www.oas.org/en/iachr/mandate/Basics/fund.asp (last visited Feb. 13, 2015); Protocol to the African Charter on Human and People's Rights on the Establishment of an African Court on Human and People's Rights art. 10(2), June 9, 1998 OAU Doc. OAU/LEG/EXP/AFCHPR/PROT (III).

[53] The African Commission Human and People's Rights, *Guidelines for the Submission of Communications*, http://www.achpr.org/files/pages/communications/guidelines/achpr_infosheet_communications_eng.pdf (last visited Feb. 13, 2017).

[54] *See* Tom Ginsburg & Richard H. McAdams, *Adjudicating in Anarchy: an Expressive Theory of International Dispute Resolution* 45 WM. & MARY L. REV. 1229, 1315 (2004) (finding that Compliance with judgments of the International Court of Justice is around 68%); *See also* OPEN SOCIETY JUSTICE INITIATIVE, FROM JUDGMENT TO JUSTICE – IMPLEMENTING INTERNATIONAL AND REGIONAL HUMAN RIGHTS DECISION 119 (2012), *available at* http://www.opensocietyfoundations.org/reports/judgment-justice-implementing-international-and-regional-human-rights-decisions (providing additional data on implementation of judgments in the European Court of Human Rights and the Inter-American Court of Human Rights).

[55] McGregor, *supra* note 26.

respect the decisions of human rights institutions.[56] Unlike state compliance with the decisions of the European Court of Human Rights, state compliance with the decisions of the Inter-American Court, and the African Commission are not high. For instance, whereas around 56% of the European Court decisions are fully implemented,[57] only 20% of the decisions of the Inter-American Court are fully implemented,[58] and in the African system it is around 14%.[59] It has been suggested that in the European context states tend to implement the decisions of the court because they are more democratic in general, and not necessarily because of the way in which the system itself operates.[60] Also, in general, states are more likely to implement decisions granting monetary compensation, than decisions requiring broader political or legislative reforms.[61] It is claimed that low rate of implementation can be attributed in part to the lack in clarity of decisions.[62]

In conclusion, it seems that in many regards, in the international context potential applicants are likely to face quite similar difficulties with accessing justice as in the national context. The most important problem, which might be even more acute in the international system, is being aware of the possibility to file a communication to an international institution. Another important aspect is that the most widely used and effective system is probably the European system, in which there are more democratic and developed countries. Finally, there seems to be a serious problem with implementing decisions of international institutions, which might deter individuals from bringing communications in the first place if their primary goal is receiving a remedy.

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[56] James L. Cavallaro and Stephanie Erin Brewer, *Reevaluating Regional Human Rights Litigation in the Twenty-First Century: The Case of the Inter-American Court* 102 AM. J. INT'L L. 768, 770 (2008).
[57] Dia Anagnostou & Alina Mungiu-Pippidi, *Domestic Implementation of Human Rights Judgments in Europe: Legal Infrastructure and Government Effectiveness Matter*, 25 EUR. J. INT'L L. 205, 215 (2014).
[58] David C. Baluarte, *Strategizing For Compliance: The Evolution of a Compliance Phase of Inter-American Court Litigation and the Strategic Imperative For Victims' Representatives*, 27 AM. U. INT'L L. REV. 263, 290 (2012).
[59] Abebe, *supra* note 43, at 14.
[60] Cavallero, *supra* note 56, at 774-75
[61] *Id.* at 785; van der Vet, *Seeking Life, Finding Justice*, *supra* note 36, at 320.
[62] Abebe, *supra* note 43, at 16; McGregor, *supra* note 26, at 749.

C. Improving Access to Justice

Due to the significant problems with the accessibility of legal institutions, there have been some suggestions proposed in the literature as to how to improve access to justice. These suggestions were proposed mainly in the context of national jurisdictions, but they can be relevant to the international sphere as well. Since awareness of rights and the need for legal help are seen as the main problems of access to justice, most of the suggestions focus on them. The first suggestion is to broaden awareness through focused legal education, targeted especially at marginalized communities. This can be done using various methods, including community-based education, radio and television broadcasts, as well as printed material.[63] Other helpful methods for disseminating information are through social networks, NGOs, local bar association, and internet websites.[64]

As to the problem of overcoming the need for legal assistance, the suggestions are divided into two. First, it is suggested to simplify the legal procedures, so that people can bring some cases without the need of professional assistance. This includes simplifying the legal procedures themselves as well as the legal documents needed for the procedures.[65] Some of the latest developments in this field included computer programs that help people without legal education to fill out legal forms.[66] However, as Rhode rightfully notes, these developments benefit mainly educated people,[67] and many marginalized people are still in need of some sort of legal assistance. Hence, many encourage developing legal assistance through clinics at law schools, pro-bono programs in law firms and NGOs.[68] Specifically regarding NGOs, it is suggested that it is particularly helpful if they bundle legal help together with other programs of assisting the poor.[69] Finally, since most of the organizations have limited resources, and taking

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[63] COMMISSION ON LEGAL EMPOWERMENT, *supra* note 14, at 19 & 23; Maru, *supra* note 31.
[64] COMMISSION ON LEGAL EMPOWERMENT, *supra* note 14, at 21.
[65] *Id.* at 18.
[66] Deborah L. Rhode, *Whatever Happened to Access to Justice*, 42 LOY. L.A. L. REV. 882, 882 (2009).
[67] *Id.* at 883.
[68] Frank S. Bloch, *Access to Justice and the Global Clinical Movement,* 28 WASH. U. J.L. & POL'Y 111 (2008) (discussing how clinics at law school can assist individuals from all over the world to access legal institutions); Alex J. Hurder, *Nonlawyer Legal Assistance and Access to Justice*, 67 FORDHAM L. REV. 2241 (1998) (discussing how non-lawyers can assist low income families and marginalized groups to access legal institutions).
[69] COMMISSION ON LEGAL EMPOWERMENT, *supra* note 14, at 37.

into account the access to justice gap, it is suggested that the efforts should be targeted at vulnerable populations, especially rural populations and minority communities.[70]

However, it is also fair to say that there is no systematic research about which of these interventions is the most effective, or even if they are effective at all.[71] Also, there seems to be no clear solution that fits all countries at all times, and it is suggested that different interventions should be tailored to the specific legal system.[72] Finally, since the resources of the state and the different organizations are limited, it is suggested that the prioritization of intervention should be "demand oriented"–i.e. understanding from the people themselves where they have the most need for intervention in order to access legal institutions.[73]

II. THE UNITED NATIONS HUMAN RIGHTS COMMITTEE

A. General Background

The International Covenant on Civil and Political Rights (ICCPR) protects the most basic civil and political rights of people. The rights protected by the ICCPR include the right to life, the right not to be tortured, freedom of speech, and the right for equal treatment before the law.[74] Currently, 169 states have joined the Covenant.[75] The Human Rights Committee (HRC) was established under Part IV of the ICCPR in order to monitor the implementation of the various rights by the member states. The HRC consists of 18 Committee Members (CMs) elected by states which are members to the ICCPR.[76] The First Optional Protocol to the ICCPR (OP) grants individuals the right to bring individual communications against member states to the HRC.[77] The OP was

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[70] ACCESS TO JUSTICE, *supra* note 51, at 10; Rhode, *supra* note 66, at 899.
[71] Maurits Barendrecht, *Legal Aid, Accessible courts or Legal information? Three Access to Justice Strategies Compared* 11 GLOBAL JURIST 1, 1 (2011).
[72] Richard Nash, *Financing Access to Justice: Innovating Possibilities to Promote Access for All* 5 HAGUE J. RULE L. 96 (2013).
[73] Barendrecht, *supra* note 71, at 1.
[74] International Covenant on Civil and Political Rights arts. 6, 7, 19 & 26, Dec. 16, 1966, 999 U.N.T.S 171 [hereinafter *ICCPR*].
[75] International Covenant on Civil and Political Rights – Status of ratification https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=_en (last visited Feb. 8, 2017).
[76] *Id.* at Part IV.
[77] Optional Protocol to the International Covenant on Civil and Political Rights, art. 1 & 2 March 23, 1976, 999 U.N.T.S. [hereinafter *Optional Protocol*].

opened for signature on December 16, 1966 and came into force on March 23, 1976. Currently, 115 states are signatories to the OP.[78] This makes the HRC the most universal international institution which individuals can access in order to receive remedies for violations of their human rights. The following map shows the ratification of the OP across the globe (states parties to the OP are in green):

Byrens quite famously argued that the individual communications system in the HRC serves three purposes: (1) providing an effective and timely remedy to a person whose right have been violated; (2) bringing law and practice changes in the state against which the petition was brought; (3) providing guidance to other state parties on the meanings and guarantees in the treaties, as well as the measures needed to implement them.[79] There seems to be some disagreements between the scholars as to what is the primary goal of the procedure under the OP.[80] Also, it might be the case that different stakeholders (i.e. the states, the individuals and the HRC) have different understanding on what is the primary goal of the individual communications procedure.

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[78] Optional Protocol to the International Covenant on Civil and Political Rights - Status https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-5&chapter=4&clang=_en (last visited Feb. 8, 2017).

[79] Andrew Byrnes, *An Effective Complaint Procedure in the Context of International Human Rights*, *in* THE UN HUMAN RIGHTS TREATY SYSTEM IN THE 21ST CENTURY 139, 142 (Anne E. Bayefsy eds., 2000); *See also* YOGESH TYAGI, THE UN HUMAN RIGHTS COMMITTEE 5-11 (2011).

[80] *Id.* at 114, 141 & 143 (arguing that the main goal of the procedure is to provide a remedy in a specific case); Geir Ulfstein, *Individual Complaints, in* UN HUMAN RIGHTS TREATY BODIES – LAW AND LEGITIMACY 73, 105 (Helen Keller & Geir Ulfstein eds., 2012); Martin Scheinin, *Access to Justice before International Human Rights Bodies: Reflections on the Practice of the UN Human Rights Committee and the European Court of Human Rights, in* ACCESS TO JUSTICE AS A HUMAN RIGHT 135 (Francesco Francioni eds., 2007) (arguing that the main purpose is to develop jurisprudence regarding the obligations of states under the ICCPR (both in the respondent state and in other member states)).

The OP itself in the Preamble states that the individual communications mechanism was established in order to "achieve the purposes of the ICCPR [...] and the implementation of its provisions."[81] No additional purpose for the individual communications mechanism was mentioned in the OP. Some scholars commented that the purpose had been left vague on purpose by the member states.[82] The *traveaux preparatoires* of the OP, might suggest that implementation was meant more in a general manner rather than dispute-resolution in a specific case.[83]

Although originally the intention of the member states might not have been to provide individuals with a remedy which is enforceable on the national level, the HRC itself had been active in promoting its decisions under the OP as binding upon the member states, and not only as mere recommendations. In General Comment 33, the HRC promoted its view that the decisions under the OP should be implemented by member states, and that the remedy for a specific violation is an important part of the implementation.[84] For instance, the HRC points out that article 2(3) of the ICCPR grants a remedy for a violation of a right protected by the Covenant, and constantly refers to this paragraph in its decisions in individual communications.[85] Moreover, in 1997 the HRC has appointed a special rapporteur for the "follow-up of views," who monitors the compliance of states with decisions under the OP, and the compliance of states is also reported in the annual report of the HRC to the General Assembly.[86] Finally, the HRC also established a procedure to request interim measures "to avoid irreparable damage to the victim of the alleged violation."[87]

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[81] Optional Protocol, *supra* note 77, at the Preamble; *See also* Yuval Shany, *The Effectiveness of the Human Rights Committee and the Treaty Bodies Reform* 6-10 (Hebrew University of Jerusalem Research Paper 02-13, 2013) [hereinafter Shany, *The Effectiveness of the Human Rights Committee*] (discussing the history of the purpose of the Optional Protocol).
[82] Steiner, *supra* note 10, at 17.
[83] Shany, *The Effectiveness of the Human Rights Committee*, *supra* note 81, at 9-10.
[84] General Comment 33 - The Obligations of States Parties under the Optional Protocol to the International Covenant on Civil and Political Rights, ICCPR, CCPR/C/GC/33 (Nov. 5, 2008) [hereinafter *General Comment 33*].
[85] *Id.* at ¶¶14 & 20.
[86] *Id.* at ¶15-17; Rules of Procedure of the Human Rights Committee, Rule 101, ICCPR, CCPR/C/3/Rev.10 (Jan. 11, 2012) [hereinafter *Rules of Procedure*].
[87] General Comment 33, *supra* note 84 at ¶19; Rules of Procedure, *supra* note 89, at rule 92.

A final place where we can look into additional purposes of the OP is the ICCPR itself (which the procedure under the OP is designed to implement). The Preamble of the ICCPR speaks of the "recognition of inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world." Further, the preamble also recognizes the responsibility to promote: "universal respect for, and observance of, human rights and freedoms."[88] Therefore, it seems that a general purpose of the ICCPR is not abstract implementation of human rights, but also the universality and equality of the implementation of those rights around the globe.

B. Access to Justice in the HRC

In this subsection I will briefly elaborate on some of the basic aspects of access to justice in the HRC. A more detailed discussion, together with more explanations, can be found in the relevant sections of Part III. In order for the HRC to consider a communication filed to it, certain admissibility requirements need to be met. These are the central requirements as set by the OP and the HRC Rules of Procedure:[89]

(a) The communication is not anonymous;[90]
(b) Comes from an individual (or individuals) subject to the jurisdiction of a State party to the OP;[91]
(c) The individual claims, in a substantiated manner, to be a victim of a violation by that State party of any of the rights set forth in the ICCPR;[92]
(d) That the communication does not constitute an abuse of the right of submission;[93]
(e) The same matter is not examined under another international procedure;[94]
(f) All possible domestic remedies have been exhausted.[95]

[88] ICCPR, *supra* note 74, at the Preamble.
[89] Optional Protocol, *supra* note 77; Rules of Procedure, *supra* note 89, at rule 93.
[90] Optional Protocol, *supra* note 77, at art. 3.
[91] *Id*. at art. 1.
[92] *Id*. at art. 2.
[93] *Id*. at art. 3.
[94] *Id*. at art. 5(2)(a).
[95] *Id*. at art. 5(2)(b).

After being received, the communication is first sent to the secretariat of the office of the High Commissioner for Human Rights (the "secretariat") which insures that some minimum standards are met.[96] After the initial screening, the communication is sent to the HRC Special Rapporteur on New Communications.[97] The Special Rapporteur ensures that the communication contains all the necessary information and officially registers the complaint. She may also decide to adopt a decision on interim measures to avoid irreparable damage to the victim of the alleged violation.[98] After the registration of the communication, the state party is usually asked to make submissions within six months both on the admissibility and on the merits of the communication.[99] It should be noted that the HRC decides a case only on the basis of the written material submitted to it, and does not hold oral hearings.[100]

After the registration of a new communication, a special rapporteur is appointed for each communication.[101] The identity of the specific rapporteur is not known to the public.[102] The special rapporteur, with the assistance of the secretariat, prepares initial recommendations and eventually a draft resolution for the HRC to discuss at its session. Prior to the discussion in the HRC, the draft is reviewed by a special Working Group on New Communications–both on the question of admissibility and the question of merits.[103] The decision of the HRC in a certain communication can be one of four: inadmissible, admissible (in the rare cases that admissibility is decided separately from the merits), no violation or violation. Additionally, in case of a violation, the HRC indicates the appropriate remedy for the violation.

As will be discussed further, the procedure under the OP was designed to be simple and straightforward in order to make the HRC accessible to individuals.

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[96] TYAGI, *supra* note 79, at 432.
[97] The HRC Special Rapporteur on New Communications is a member of the Human Rights Committee that is elected by the Committee Members themselves for the position (*see* Rules of Procedure, *supra* note 89, at rule 95(3); SUZANNE EGAN, THE UN HUMAN RIGHTS TREATY SYSTEM: LAW AND PROCEDURE 258 (2011)).
[98] Rules of Procedure, *supra* note 89, at rule 92.
[99] *Id.* at rule 97.
[100] *See* Optional Protocol, *supra* note 77, at art. 5.
[101] Rules of Procedure, *supra* note 89, at rule 95(3).
[102] *See* TYAGI, *supra* note 96, at 434.
[103] Rules of Procedure, *supra* note 89, at rules 93, 94, 95 & 100.

However, given the low number of communications actually filed under the OP over the years, there seems to be either a problem with the design of the procedure, or with its *de facto* implementation by the HRC.

III. RESEARCH DESIGN

A. Motivation for the Study

The ICCPR is probably the most famous (and one of the most ratified) human rights treaties, and the HRC itself is the most high profile UN treaty body. Due to that, it is very surprising that such a small number of individual communications have been filed to it over the years. It seems that because of its prestige and relative independence, through the individual communications system the HRC can potentially help raising awareness to human rights problems, develop important jurisprudence on many subjects, and provide individuals with needed remedies. This is especially true for people from regions that do not have an effective and accessible regional human rights system–mainly Asia, Africa and some former communist countries.[104] Also, theoretically the system should be quite accessible, since there are no oral hearings and all the process can be done in writing. However, for some reason, the system does not fulfill its potential. Therefore, this article seeks to evaluate the success of the system, understand the main difficulties to accessing it, and making recommendations for improvement. Moreover, since individuals are being granted standing before an increasing number of international institutions, the lessons learnt from the HRC can shed light on the general question of how to make international institutions more accessible.

As mentioned above, the term of access to justice is very wide, and the main question is how to evaluate the success of an institution in this regard. Shany suggested that the assessment of the success of international courts should start from understanding the *goal* that the institution aims to achieve.[105] After understanding the

[104] A qualitative research conducted on the communications filed against Australia, a country that does not have an alternative HR tribunal, found that most of the applicants felt the process of filing a communication was worthwhile (*see* Olivia Ball, All the Way to the UN: Is Petitioning a UN Human-Rights Treaty Body Worthwhile? 385-86 (Dec. 20, 2013) (unpublished PhD dissertation, Monash University) (on file with the author).

[105] Yuval Shany, *Assessing the Effectiveness of International Courts: A Goal-Based Approach*, 106 AM. J. INT'L L. 225, 227 & 230 (2012). It should be noted that whereas Shany discussed mainly assessing the effectiveness of international courts, this paper focuses on access to justice. *See also* Mauro Cappelletti et al., *Access to Justice, Variations and Continuity of a World-Wide Movement*, 46 J. COMP. & INT'L L. 664

goals of the institution, we can develop specific criteria which could assist us in evaluating the system. Understanding the goal of a specific institution is not a simple endeavor. As is widely discussed in Shany's article, goals can be both stated and unstated,[106] different stakeholders may have different goals, and there might also be difference in goals among the same stakeholders.[107] Therefore, the first step would be to understand what the different stakeholders sought to achieve by granting individuals access to the HRC. The current article evaluates this questions from the perspectives of three stakeholders–the states parties to the OP, the HRC and the individual applicants.[108] Whereas the goals of the OP, as perceived by the member states and the HRC, were discussed in section II.a., the qualitative-empirical part of the article asses this question also from the applicants' point of view.

B. Research Questions and Method

I use three criteria in order to evaluate the access to justice in the HRC. The first criterion is universality and equality of access to the HRC. This criterion asks from which countries do most of the communications come, and specifically whether an "access to justice gap" exists on the international level. The second criterion is difficulties with accessing the HRC. This criterion aims to understand the main difficulties that applicants face with accessing the HRC–for instance, awareness of the existence of the procedure, resources needed for filing a communication, and fear of state persecution. The third criterion is inter-personal impressions from the process. This is criterion is much more subjective than the other two, and tries to understand

(1992) (discussing different political and critical approaches to the concept of "access to justice" in the context of national jurisdictions).

[106] Shany, *supra* note 105, at 242.

[107] *Id*. at 240-42[108] Although Shany's proposal was developed mainly in order to evaluate the *effectiveness* of international *courts*, it suggests many important insights for evaluating also the accessibility of other legal institutions, including quasi-judicial tribunals like the HRC. This is mainly because it guides us to understand the expectation of the different stakeholders from granting individual access to international institutions, and accordingly evaluate the success of the procedure. Shany himself applied the goal based approach to the UN treaty bodies (Shany, *The Effectiveness of the Human Rights Committee*, *supra* note 81).

[108] Although Shany's proposal was developed mainly in order to evaluate the *effectiveness* of international *courts*, it suggests many important insights for evaluating also the accessibility of other legal institutions, including quasi-judicial tribunals like the HRC. This is mainly because it guides us to understand the expectation of the different stakeholders from granting individual access to international institutions, and accordingly evaluate the success of the procedure. Shany himself applied the goal based approach to the UN treaty bodies (Shany, *The Effectiveness of the Human Rights Committee*, *supra* note 81).

how the process itself is perceived from the perspective of the applicants. For instance, I examine whether the process is perceived as just, and whether the interviewees recommend others to file communications in light of their personal experience. The subjective experience of people with legal institutions is regarded to be of special importance in evaluating the access to justice in legal systems, since research shows that people's perception of institutions as just is very much dependent on whether they think that the procedure was fair.[109]

This article uses a mixed methods approach–both quantitative (regression analysis) and qualitative (interviews). Using both methods presumably provides us with the best understanding of the access to justice in the HRC.[110] As Greene and Carcelli argue, using a mixed research method allows to evaluate both "the realist objectivist, value-neutral perspective *and* the constructivist, subjectivist value-engaged perspective."[111] In our case, the quantitative analysis provides us with a general picture of the distribution of the possibility to access the HRC, and can indicate whether an "access to justice gap" exists in the international context. Also, it can provide us with certain directions of what might be the difficulties that potential applicants face with accessing the HRC. Finally, it can provide some relevant data on the rate of representation before the HRC and the identity of the representatives.

On the other hand, the qualitative analysis allows us to understand much more in depth the difficulties to access the HRC, since many aspects of access to justice cannot be evaluated merely by analyzing numbers. Moreover, quantitative data cannot answer

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[109] Laura Klaming & Ivo Giesen, *Access to Justice: The Quality of the Procedure* 14 (TISCO Working Paper Series on Civil Law and Conflict Resolution Systems No. 002/2008), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id_1269329; Procedural justice seems to be equally important to people from different cultures and procedural justice seems to be defined largely in terms of the same variables across cultures (*see* Brockner et al., *Culture and Procedural Justice: the Influence of Power Distance on*
Reactions to Voice 37 J. EXPERIMENTAL SOCIAL PSYCHOL. 300 (2001); Lind et al., *Procedural Context and Culture: Variation in the Antecedents of Procedural Justice Judgments*, 73 J. PERSONALITY AND SOC. PSYCHOL. 767 (1997) ; Sugawara & Huo, *Disputes in Japan: a Cross-Cultural Test of the Procedural Justice Model*, 7 SOC. JUST. RES. 129 (1994)).

[110] *See generally*, JOHN W. CREWSWELL, RESEARCH DESIGN: QUALITATIVE, QUANTITATIVE, AND MIXED METHODS APPROACHES (2013); Mario Luis Small, *How to Conduct a Mixed Methods Study: Recent Trends in a Rapidly Growing Literature*, 37 ANNU. REV. SOCIOL. 57 (2011) (providing an introduction to recent trends in mixed methods research).

[111] Jennifer C. Green & Valerie J. Carcelie, *Making Paradigmatic Sense of Mixed Methods Research*, *in* HANDBOOK OF MIXED METHODS IN SOCIAL AND BEHAVIORAL RESEARCH 91, 94 (Abbas Tashakori & Charles Teddle eds., 2003)

questions regarding the subjective experiences of the people with the procedure. Finally, interviews with applicants can give us the best understanding of the goal of the individual communications procedure from their perspective.

There are several suggestions how to evaluate the quality of a judicial procedure, and in particular the accessibility of judicial institutions. In this article I chose to focus on the criteria proposed by Gramatikov, Barendrecht & Verdonschot,[112] as well as by Klaming & Gissen,[113] together with insights from other scholars.[114] As will be further elaborated in part III, I adopted the indicators suggested in the context of the national courts and added indicators relevant to the context of international law, and the HRC in particular. This was done taking into account the specific goals of the HRC and the quantitative findings.

IV. EVALUATING ACCESS TO JUSTICE UNDER THE OP

A. Quantitative Analysis

In the quantitative part I will first present and analyze data about global equality of access to justice, and afterwards I will present and analyze data regarding legal representation before the HRC.

1. Universality and Equality of Access to the HRC

i. Research Question and Hypothesis

As mentioned previously, according to official UN data, only 2,371 communications had been filed until March 2014. Even though the original definition of access to justice gap focused on people within a country, it can be also a good analogy (even if not perfect) to the level of countries. Using the same rational, it seems that the ones who need the HRC the most, are people under jurisdictions of countries that are less likely to comply with the provisions of the ICCPR. However, according to the previous literature, people from non-democratic and less socio-economically developed countries are less likely to practice their rights to access legal institutions. Therefore, the

[112] Martin Gramatikov, Maurits Barendrecht & Jin Ho Verdonschot, *Measuring the Costs and Quality of Paths to Justice: Contours of a Methodology*, 3 HAGUE J. RULE L. 349 (2011)
[113] Klaming & Giesen, *supra* note 109.
[114] Andrew Byrnes, *supra* note 80; Shany, *supra* note 105 at 254; Scheinin, *supra* note 80.

main hypothesis in this chapter would be that people are more likely to file communications against countries that are more developed and democratic.

ii. Data

The main dependent variable in this section is the number of communications brought against a state in a given year. I coded the number of communications filed against states which were parties to the OP for every year in which they were members to the OP (N= 1,639). I collected the data from all 799 decisions issued by the HRC between 1997 and 2012. The decisions were taken from the Bayefsky database,[115] and supplemented by the United Nations Treaty Body Database (for decisions published after July 27, 2012).[116] It is important to note that states entered the dataset only from the year that they joined the OP–therefore, there are states for which not all years are coded. Additionally, as the independent variables, I also coded different geographical, political and socioeconomic variables for each state in the specific year of the observation.

I chose to construct a dataset based on decisions issued between 1997-2013, since my main concern was to understand the *current* patterns of filing communications to the HRC and what can be done to make the process more accessible to more people from all over the world. It should be noted that I could know that a communication was filed in a given year only if there actually was a decision of the HRC in the communication (either on admissibility or on merits grounds). Therefore, if a communication was filed but eventually discontinued, or there was no decision on it at the time that I did the coding, it could not have been included in the dataset.[117]

In order to test the hypothesis, I use *total* as a dependent variable–a count variable indicating the number of communications filed against a state in a given year. Additionally, I also use the following independent variables: human rights score of the

[115]The United Nations Human Rights Treaties – CCPR – Jurisprudence http://www.bayefsky.com/docs.php/area/jurisprudence/treaty/ccpr/opt/0/node/5/type/all (last visited Feb. 13, 2017).
[116] United Nations Human Rights – Treaty Bodies Search http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en (last visited Feb. 13, 2017).
[117] I tried to receive information about discontinued communications from the secretariat, but I was told that they do not have it.

country, independence of the judiciary score, freedom of speech score, polity score, rule of law score, GDP per capita (log), and literacy rate. I also control for three variables that can explain the number of communications filed (which is the dependent variable). First, I control for the existence of an alternative regional human rights institution for the claim, since usually applicants can bring their case only before one international forum.[118] Second, I control for the population of a country, since one should expect more communications coming against countries with a bigger population. Finally, I control for the number of years that passed between the given year and the year that the country first joined the OP, since people might be more aware of the possibility of filing a communication over time. A full description of the variables can be found in **Appendix 1**.

iii. Results

The first step is to provide some descriptive statistics. The *regional* distribution of membership in the OP is as follows: 29.57% of the states belong to the African group, 10.43% to the Asian group, 19.13% to the Eastern European group, 20.87% to the Latin American group, and 20% to the Western group. When we look at the distribution of the number of communications on the regional level, we see the following distribution– 8.47% of the communications were filed against African countries, and the same percentage of communications were filed against Latin American countries. 16.04% of the communications were brought against Asian countries, 22.15% against Eastern European countries, and 44.28% against Western countries.

Since the Western group, in general, is regarded as having a better human rights record than other regions, it can indicate that more communications are not necessarily filed against worse human rights violators. This is even more evident when we compare the distribution, by region, of the percentage of states from the region parties to the OP and the percentage of communications filed against states in the region:

[118] *See* Laurence R. Helfer, *Forum Shopping for Human Rights*, 148 U. PA. L. REV. 285 (1999).
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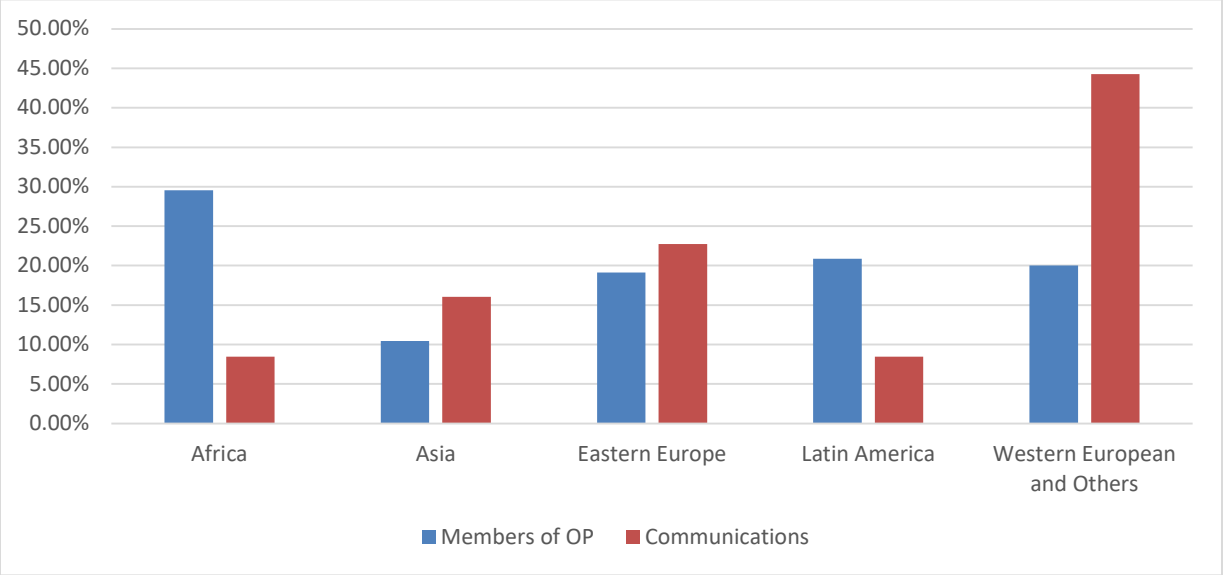
Figure 1 – Percentage of States members to the OP and Percentage of Communications



When we look at the distribution on the state level, the state against which most of the communications were filed in the time period of the research was Spain–92 communications. Spain is followed by Belarus (54), Canada (51), Australia (44) and the Czech Republic (42). In the relevant time period, no communications at all were filed against one third of the countries. Among the countries against which no communications were filed can be found countries such as Luxembourg, Liechtenstein and Malta, as well as countries such as Bolivia, Albania, Chad, Ghana and Congo. A full list of the number of communications against countries can be found in **Appendix 2**.

The next step is to test the hypothesis in a regression that allows us to control for the population, existence of an alternative tribunal, and years since joining the OP. I use a negative binomial regression model. The negative binomial model is more appropriate in this case than the Poisson model that is often used for count models, since the Poisson distribution assumes that the mean and variance of the dependent variable is equal. In the data presented in the article, however, the mean of the dependent variable *total* is 0.47 and the variance is 2.11. Moreover, in a goodness of fit test for the Poisson model, the chi square value was > 0.000, allowing us to reject the null hypothesis that

the Poisson model is the appropriate one. Finally, the standard errors were clustered for the different states in all the specifications.

The dependent variable is the number of communications filed against a state in a given year. Each regression model uses different independent variables that represent the political and socioeconomic situation in a state. Many independent variables could not be included in the same regression due to multicollinearity problems, therefore I use different independent variables interchangeably.

Table 1 – Negative Binomial Regression

	(1)	(2)	(3)	(4)	(5)	(6)	(7)
Independence	0.373**						
	(0.163)						
Polity		0.0282					
		(0.0258)					
Speech			0.129				
			(0.188)				
Human Rights				0.311***			
				(0.0850)			
Rule of Law					0.398***		
					(0.107)		
GDP (log)						0.546***	
						(0.103)	
Literacy							0.0422***
							(0.00839)
Alternative	-1.320***	-1.338***	-1.218***	-1.267***	-1.343***	-1.453***	-0.857***
	(0.348)	(0.324)	(0.311)	(0.317)	(0.361)	(0.317)	(0.281)
Population (log)	0.546***	0.523***	0.559***	0.667***	0.555***	0.527***	0.553***
	(0.0905)	(0.111)	(0.102)	(0.117)	(0.0949)	(0.0887)	(0.0924)
Delta year	-0.0921***	-0.110***	-0.108***	-0.112***	-0.102***	-0.126***	-0.107***
	(0.0174)	(0.0207)	(0.0170)	(0.0220)	(0.0207)	(0.0203)	(0.0214)
Constant	-8.390***	-7.561***	-8.260***	-10.07***	-8.086***	-12.26***	-12.16***
	(1.611)	(1.829)	(1.779)	(1.955)	(1.599)	(1.902)	(1.828)
Observations	1,598	1,444	1,599	1,627	1,639	1,557	1,639

Robust standard errors in parentheses

*** p<0.01, ** p<0.05, * p<0.1

From the models above we can see that all the coefficients of the variables which measure the political and human rights situation in the country are positive, and the variables of human rights, rule of law and judicial independence reach statistical significance. Also, the coefficients of the GDP and the literacy variables are positive and statistically significant. This indicates that people from more socio-economically developed countries are more likely to file communications. As expected, the coefficient of population is positive and statistically significant. Also, the coefficient indicating the existence of an alternative regional human rights tribunal is negative and statistically significant. Probably potential applicants prefer to bring their cases before regional tribunals rather than the HRC because their decisions are more likely to be enforced. Finally, the coefficient of delta year, which indicates the number of years since the state joined the OP, is negative and statistically significant. This is a surprising finding, since one might assume that with time the awareness to the existence of a tribunal will be higher and people would be more likely to file communications to the tribunal. A possible explanation to this puzzle might be the fact that almost a quarter of the communications filed to the HRC are from the Eastern European group–which are countries that belonged to the communist bloc. These countries joined the OP only in the nineties, and perhaps this is the reason why the coefficient is negative. A more pessimistic interpretation might be that potential applicants are discouraged by the lack of implementation of previous communications by the state, and therefore there are less communications filed.

It is also important to look into the question of whether the general pattern is different when we look into the data only in specific regions or in narrower time frames. Therefore, I ran two additional sets of regressions–by UN regional group, and by time frame (the tables with the regressions are presented in **Appendixes 3 & 4**). As for the regional regressions, it seems that the general patterns described above continued to exist, but the coefficients of the polity, freedom of speech, and rule of law were much less statistically significant. Therefore, the "access to justice gap" probably exists more on the macro-level, and is less sensible to smaller differences within regions.

Also, there were some interesting trends within the regions themselves. First, in the African region, the coefficients of freedom of speech and human rights score were negative, and the first coefficient even reached statistical significance. Meaning, that in the African context, more communications are actually filed against countries with worse human rights and political scores. This is an interesting deviation from the very clear pattern seen on the macro-level, where communications are filed against the more democratic countries. Also, the coefficient of the literacy of the population reached positive statistical significance only in the generally less economically developed regions–Africa, Asia and Latin America. In the Eastern European and Western regions, it did not reach statistical significance, and was even negative in the Western group of countries.

As for the time trends, I looked into three time frames of 5 years each – 1997-2002, 2002-2007 and 2007-2012. When divided into different time frames the access to justice gap seemed to follow the general trend, with a few interesting exceptions. First, the coefficients on polity and freedom of speech were positive in all time periods, but reached statistical significance only in 1997-2002. All other political and socio-economic coefficients (human rights score, rule of law, literacy and GDP), were positive and statistically significant through all time periods. Also, the coefficient of delta year, was both negative and statistically significant only in 2007-2012.

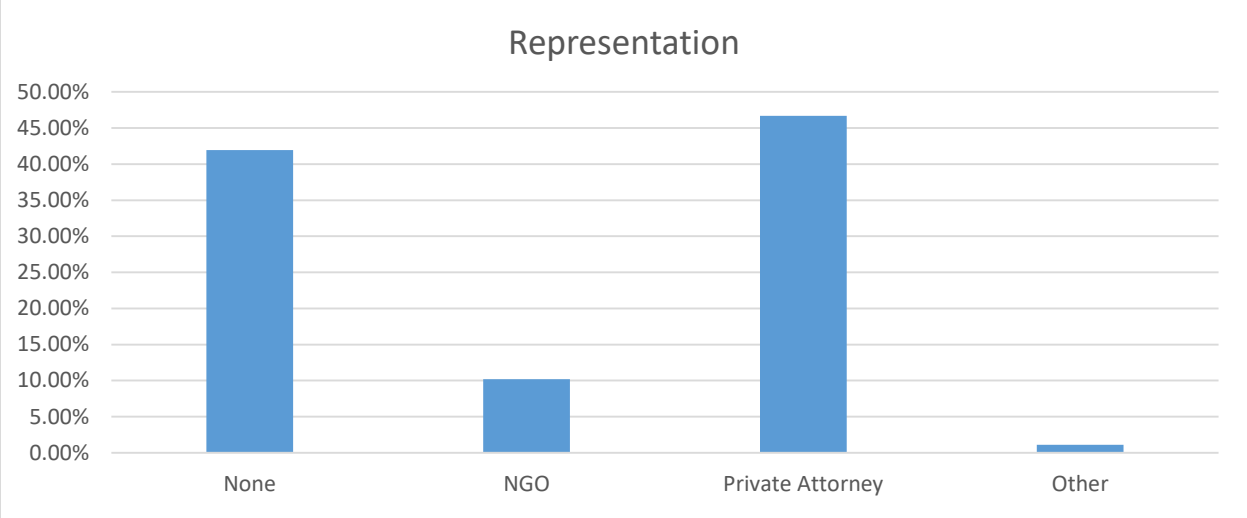
I also tried to see whether a change in the human rights score of the state influenced the number of communications filed against it. For that purpose, I tested whether the difference in the human rights score of the state in a given year and the human rights score of the state in the year before that, rendered any results. However, the results were not statistically significant.

In conclusion, the results indicated that there was a clear pattern of people from countries with a good record of human rights, political freedom and economic development bringing communications to the HRC. However, those trends were much more evident on the macro-international level than on the micro-regional level.

2. Representation before the HRC

As discussed above, a very important aspect of access to justice is whether people need *legal representation* in order to bring their case before the HRC. This is of special importance in the context of the HRC, since unlike some of the regional human rights systems, the HRC does not have a litigation fund. In order to assess that, I looked through the relevant decisions, and coded whether the applicant was represented. If he was represented, I also coded by whom the applicant was represented. For the cases during the relevant time period, most of the petitioners (58.04%) were represented– either by an NGO (10.21%) or by a private attorney (46.71%).[119] However, in 41.96% of the communications it has not been mentioned that the applicants was represented:

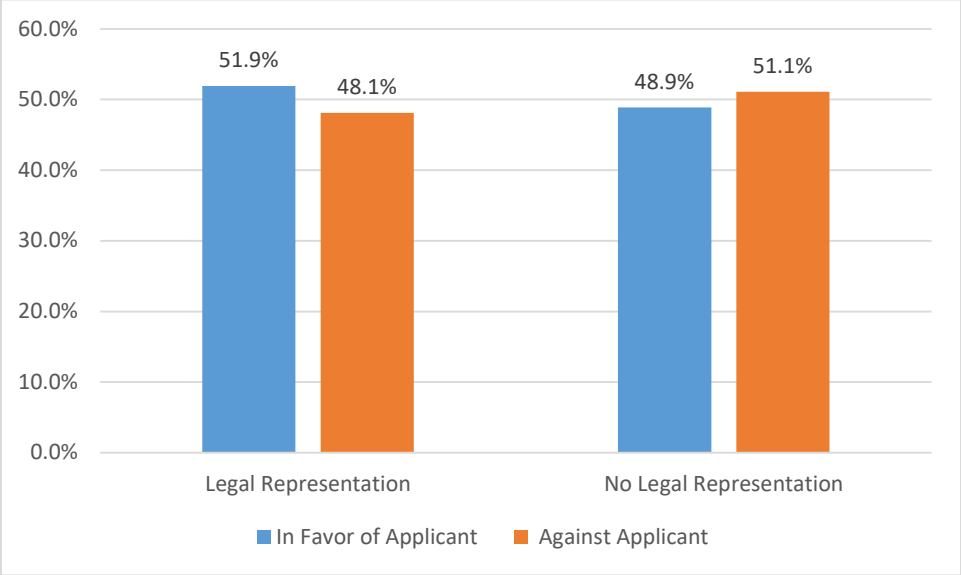
Figure 2



The next question is whether the fact that an applicant is represented improves his chances to win a case–meaning that the HRC will find the communication admissible and that the state violated at least one of the treaty articles. The following chart demonstrates the number of applicants that won a case against a state and whether they were represented.

[119] 1.13% were classified as other–mainly people whose family members filed petitions in their names.

Figure 3



As can be seen from the chart, 51.9% of the applicants who were represented won their case before the HRC, compared to 48.9% of the applicants who were not represented. This difference is of course not statistically significant –[120] meaning that according to these statistics, the HRC is a friendly forum for people who are not represented, and theoretically the need for representation is not necessarily a significant barrier in this regard. However, it should be taken into account that representation can be important also to the awareness of the individual of his possibility to file a communication to the HRC.

3. *Conclusion of the Quantitative Part*

This part looked into two criteria–the global equality of access to justice, and the quantitative data of representation before the HRC. When examining the criteria of *equality of access to the HRC*, the results indicated that on the macro level there is a

[120] Using a simple chi-square test.

clear pattern of people from countries with a good record of human rights, political freedom and economic development bringing communications to the HRC. Regarding *legal representation*, the descriptive statistics seemed to indicate that many people filed communication to the HRC without being officially represented, and that the lack of representation did not influence the chances of the HRC voting in favor of the applicant.

Finally, the quantitative part might also suggest what difficulties potential applicants face, to be further explored in the interviews. Given that there are certain barriers that applicants from less democratic and socio-economically developed countries are more likely to encounter, we can hypothesize what are the different reasons for having significantly less communications from those countries. The first possible difficulty is state intimidation for filing communications to the HRC. States that have a general tendency of violating human rights, would probably look less favorably on filing communications against them, and not hesitate taking measures to prevent potential applicants from shaming them internationally. Additionally, it might also be assumed that it is harder to be aware of the procedure of individual communications in less democratic countries. This is because it is less likely to be taught in universities, the press is less likely to report about decisions against the state, and perhaps people have less access to information in general.

Another interesting (even though expected) finding is that the existence of an alternative tribunal reduces the probability of filing a communication to the HRC. Therefore, through the interviews it is important to understand what brought applicants who had chosen the HRC over an alternative tribunal, to do so. This can shed light both on the relative accessibility of the HRC as compared to other international institutions, and perhaps also provide additional indications about the different motivations for filing communications to the HRC.

Finally, although it seems that the HRC is quite accessible even without legal representation, a closer look is needed. This is because the data that I collected relied only on what was indicated in the decisions of the HRC. However, if an applicant had actually been assisted by a lawyer behind the scenes, this would not be reflected in the data that I brought.

B. Qualitative Analysis

1. Research Questions

Interviews can assist us with answering questions regarding the motivations of individual applicants for filing individual communications to the HRC, the difficulties to accessing the HRC, and the inter-personal impressions from the process. Taking into account the quantitative findings, I looked into the following indicators of access to justice (the corresponding question numbers in the questionnaire are in parentheses. The questionnaire can be found in **Appendix 5**):

(1) Goal of Filing Communications to the HRC:
   (a) Did applicants file a communication because they hoped to receive a remedy or because they wanted to raise national/ international awareness to a certain problem? (Question 6).
   (b) Did the interviewee believe that the state would implement the decision? (Question 7).
   (c) How important were different aspects of the communication process to the applicants and their representatives? (Questions 38-42).

(2) Difficulties with accessing the HRC:
   (a) Availability of the information regarding the possibility of filing a communication to the HRC–how did the applicants and their representatives find out about the possibility of filing communication under the OP? (Questions 2, 16 & 17).
   (b) Reasons for choosing the HRC over an alternative tribunal (questions 8, 9 &10).
   (c) Methods of filing communications–how can an individual bring a communication to the HRC? Is the process of bringing communications easy and straightforward? (Question 26).
   (d) Requirement to exhaust domestic remedies–do applicants exhaust domestic remedies before bringing a communication to the HRC? Do states argue that the HRC lacks jurisdiction on these grounds? (Questions 3, 4 & 5).

(e) Money and other resources needed for the process–how necessary it is to have legal representation? How expensive is it to file a communication to the HRC? How many hours are needed in order to file a communication? Can an individual file a communication without professional help? (Questions 15 & 19).

(f) Persecution by the state–do applicants and their representatives fear persecution by the state? Did the applicants or their representatives actually experience persecution? (Questions 21, 22, 23, 24 & 25).

(g) Quality of remedy–is the remedy provided by the HRC detailed enough? (Question 31).

(h) Hardship to implement the decision on the domestic level–was the decision of the HRC implemented by the state? Did the applicant have to undergo additional national judicial or administrative procedures in order for the HRC decision to be implemented by the state? (Questions 35 & 36).

(i) Other difficulties and concerns raised by the interviewees (Questions 27 &32).

(3) Inter-personal impressions from the process:

(a) Communication with the UN staff during the process itself–how accessible and responsive is the UN staff to applicants and their representatives? (Question 33).

(b) Fairness of the system–is the process before the HRC perceived as fair? (Question 34).

(c) Recommending others to bring a communication–do applicants recommend others to use the individual communication system under the ICCPR? (Question 44).

(d) Intentions to file a communication themselves–would the applicants and their representatives consider filing another communication to the HRC in the future? (Question 46).

(e) Belief in the wider effect of the decision–do the applicants believe that the decision of the HRC in their case had a wider impact? (Question 37).

2. Data

The qualitative component of the research analyses interviews with people who filed and assisted with filing communications to the HRC. I interviewed applicants, private lawyers and NGOs. I used a semi-structured interview method–the interviewees were asked both pre-determined questions found in a questionnaire, and additional questions about relevant topics that came up during the interview.[121] There was a separate questionnaire for applicants, and a separate questionnaire for representatives, but most of the questions overlapped (**Appendix 5**). Overall, 32 people were interviewed via Skype–4 applicants, 16 private lawyers and 12 NGOs.

The main method of finding the interviewees was through a search on the internet of the names indicated on the decision of the HRC. I contacted potential interviewees from decisions given between November 30, 2006 to February 28, 2016. Since for certain countries it is much harder to locate people via the internet, four of the interviewees were referred to me by other interviewees (a partial snowball sample).[122] The interviews were conducted by me both in English and in Russian.

The sample of interviewees might be biased for three main reasons. First, I could not locate the contact details of many applicants or their representatives, and it could be assumed that it is harder to locate via the internet people from less developed countries. Another sample bias, which poses a problem in most interview researches, is that the decision to participate in the study was voluntary. Therefore, perhaps certain types of interviewees were more likely to agree to participate–for instance, people who were very disappointed with the decision of the HRC, or people who received precedential decisions in their favor and wanted to talk about their success. Finally, the problem with the sample of interviewees is that I interviewed only people who have actually *filed* a communication to the HRC. Therefore, I might not be able to understand some of the reasons that preclude people from filing communication in the first place. I tried to partially solve this problem by discussing with interviewees (especially lawyers and

[121] University of Chicago IRB approval IRB15-1518.
[122] Mark S. Handcock & Krista J. Gile., *Comment: On the Concept of Snowball Sampling*, 41 SOC. METHODOLOGY 367 (2011); Douglas D. Heckathorn, *Comment: Snowball versus Respondent-Driven Sampling*, 41 SOC. METHODOLOGY 355 (2011).

NGOs) the general question of what can be done in order to make the HRC more accessible. Many of them had a long experience with promoting human rights, and so they could shed some light on possible difficulties that preclude people from accessing the HRC in the first place.

3. Results

i. Motivation for Filing Communications

As mentioned at the beginning of the article, in order to evaluate a judicial (or quasi-judicial) institution, one needs to understand the *goal* of the institution. This goal should be analyzed from the perspective of all relevant stakeholders–in this case the member states, the HRC and the applicants themselves. Interviews are the best tool in order to understand the goals of the applicants.

When asked about the *reason for bringing a communication to the HRC* (question 6), 75% of the interviewees mentioned the belief that the state would implement the decision of the HRC as the motivation for bringing the communication before the HRC in the first place. While 34.3% of the interviewees mentioned it as the primary motivation for bringing a communication, 40.6% of the interviewees mentioned it as one of the motivations for bringing a communication. On the other hand, 59.3% of the interviewees mentioned the will to bring the human rights violation to the attention of the national/ international public as a reason for filing the communication, and only 18.7% of the interviewees indicated it as the only reason for bringing the communication to the HRC.

Also, when asked whether they believed that the state would actually implement the decision of the HRC (question 7), 77.4% of the interviewees did believe, to some extent, that the state would eventually implement the decision of the HRC. However, when asked whether they had been aware of the implementation rate of the decisions of the HRC (question 28) only 41.3% of the interviewees answered that they had been aware of the implementation rate.

The answers to questions 38-42 also seem to reflect a certain preference to the role of the HRC as granting decisions that would be implemented by the state. The interviewees were asked to grade, on a scale of 1 to 5, how important several aspects of the process were for them. When asked how important was it for the applicant that the

state would implement the decision (question 39), 80% of the interviewees indicated "5."[123] In a parallel question (question 38), when the representatives were asked how important was it for them that the decision would be implemented by the state, 67.85% of the interviewees indicated "5." [124] When asked how important was it that the national/ international public would be aware of the filing of the communication (questions 40 and 41), only 36.6% people indicated "5" for the applicants themselves,[125] and 35.71% indicated "5" for themselves as representatives.[126] Finally, very similar numbers were indicated when interviewees were asked about how important was that for them that the national/ international public would be aware of the decision of the HRC in the communication (questions 42 & 43)–40.74% of the interviewees (both applicants and representatives), indicated "5."[127] Therefore, it seems that at least from the analysis of the numerical answers, there is a certain preference to the HRC as providing a remedy that could be implemented on the national level.

However, throughout the answers to different questions in the interviews, a more complex picture was revealed. It seems that among the interviewees there were different perceptions as to what was the role of the decisions under the OP. Some thought that the role of the decisions was mainly one of creating unified and clear international human rights jurisprudence and awareness to human rights problems,[128] and not necessarily providing a remedy in a specific case. Others, obviously, held the opposite view. Also, as reflected in the slight difference in the in the answers to questions 38-43, there was a difference between the motivations of the representatives and the motivations of the applicants themselves. It seems that to some degree, the applicants tend to be more interested in the implementation of the decision in their cases, while the representatives (especially NGOs) at times use the cases of the applicants in order to develop the international jurisprudence. Representatives sometimes mentioned goals such as "strategic litigation," and promoting jurisprudence on certain subjects like death

[123] Average – 4.5
[124] Average – 4.4
[125] Average – 3.2
[126] Average – 3.7
[127] Average – 3.53 for applicants and 3.8 for representatives.
[128] #1, 15.

penalty, and social and economic rights.[129] One of the interviewees, who is an experienced human rights lawyer, said that:[130]

> The reason ... first what we engaged in was sort of strategic litigation, and by that what I mean is we are trying to actually change something beyond just getting a remedy for the victims. I mean getting a remedy for the victims is foremost priority for us, but we also try to shape the norms and try to push some jurisprudence. One of the things we wanted to do with the human rights committee is sort of expand their jurisprudence when it comes to certain aspects of social rights.

Interviewees from countries with a problematic record of human rights were many times more realistic about the prospect of implementation by the state ("many applicants know that the decision will not change the reality").[131] Some mentioned that they do hope that when there would be more and more decisions against the state on the same subject, it would eventually have a certain impact.[132] One of the interviewees even mentioned that the decisions of the HRC might help establishing a democratic regime in the country in the future.[133] He also told that he had printed a booklet with a summary of the decisions of the HRC against the state, and handed it to state officials. Another interviewee mentioned that the HRC gives people hope against corrupt national legal institutions.[134] Additionally, some interviewees mentioned that they brought their communications because they wanted their human rights violations to be recorded as "part of history" in the "United Nations official records".[135] As one interviewee put it:[136]

> At the same time, because all other remedies are exhausted, this is one last hope that a victim has to tell their story, to put

[129] #5, 12, 11, 22, 24, 26, 27.
[130] # 27.
[131] #7.
[132] #24, 26.
[133] #23.
[134] #28.
[135] #12, 15, 20, 24.
[136] # 20.

> her on the public record. By that I mean, public record both here in [the country] but also internationally. Really, the key point here is that it provides a measure of ...Even if you don't get a practical change in the government's behavior, it does give the victim some kind of vindication and satisfaction, for the UN to declare that their rights had been violated. That's what they'd said all along, that they'd been badly treated.

Interestingly, there is no indication that a historic record of atrocities was regarded as one of the goals of the process by the member states (or even the HRC itself). However, it seems that interviewees that come from countries where violations of human rights had been common, saw it as a very important goal. Additionally, it was also suggested that the decisions of the HRC might empower marginalized communities.[137] Finally, two of the interviewees mentioned that they used the process under the OP in order to promote a dialogue with the state and reach a final settlement over a disputed issue.[138]

From the analysis above it can be concluded that although the original goal of the member states was having non-binding jurisprudence on the rights granted by the ICCPR, both the HRC and the applicants themselves increasingly see the individual communications procedure as judicial in nature, granting a remedy that should be implemented on a national level. Also, whereas human rights lawyers and NGOs see the HRC as a platform for strategic litigation, some applicants also see it as a forum to tell their story.

ii. Difficulties with accessing the HRC

One of the major problems with accessing the HRC is probably the *availability of information about filing a communication*. When asked about how had they learned about the possibility of filing communications to the HRC (question 2), the most common answer was legal education–45% of the interviewees chose that option. 9.3%

[137] # 29.
[138] #17, 20.

interviewees were informed about the possibility by a lawyer, and the same percentage was informed about the possibility by an NGO. Other ways of finding out about the possibility included a search on the internet, and people who learned about the possibility from someone else who filed a communication. Another option which was mentioned by four interviewees was courses and seminars organized by different funds to empower and promote human rights activities in countries with a problematic human rights record.[139] The impression was that whereas interviewees from democratic countries were more likely to learn about the possibility of filing a communication through university education or a search on the internet, other interviewees were more likely to find out about the possibility through different networks and seminars. All the people whom I interviewed and filed communications without legal help, had either legal education or a long history of being human rights activists. Therefore, when one of my interviewees told me that he heard of some "lay people" who filed communications without professional help, I asked how he thought that they had found out about the possibility. I received the following answer:[140]

> I guess it depends. In general, as you know, it's very unexploited and unknown, but sometimes I guess they see in the newspaper, for instance.
>
> [...]
>
> Sometimes national press do talk about it and disseminate news about that, so they see "International expert body ... Anti-torture body ..." or whatever condemns [a country] for torture in this case. I guess they also learn about it because they know someone that did it. It's true, it's not very easy, so it's not an accessible procedure let's say. It's not very accessible.

When asked whether they had heard of the HRC prior to the decision to file a communication to the HRC themselves (question 16), 87.09% of the interviewees

[139] #2, 23, 24, 28.
[140] #29.

mentioned that they had known about the HRC beforehand. Moreover, 67.74% of the interviewees mentioned that they had a chance to discuss and consult about filing a communication with other applicants before filing a communication themselves (question 17). When asked to provide information about the interaction with others before filing a communication, interviewees mentioned consulting with human rights lawyers and NGOs about the procedure and strategies of filing communications to the HRC.[141] Also, several interviewees mentioned that they had been exposed to the possibility of filing a communication through networks of lawyers and NGOs working to promote jurisprudence on a certain subject, or to improve the human rights situation in a certain country. These networks were also mentioned as good platforms for finding out more information about how exactly the process before the HRC works.[142]

Furthermore, from the interviews it seemed that some NGOs have taken the initiative to make the treaty mechanism much better known. For instance, a handbook which was published by the World Organization against Torture provides information about the UN individual communications system.[143] This handbook has been published in five languages–English, Spanish, French, Arabic and Russian. Finally, one of the interviewees who works for a big NGO told about a special project that the NGO is leading to promote capacity building of litigation before the UN treaty bodies. This project involves the NGO itself litigating precedential cases before the HRC on certain

[141] # 1, 4, 5, 6, 8, 12, 13, 16, 18, 19, 20.
[142] # 10, 11, 12, 13, 16, 18, 24, 29.
[143] SARAH JOSEPH ET AL., A HANDBOOK ON THE INDIVIDUAL COMPLAINTS PROCEDURES OF THE UN TREATY BODIES (2014), http://www.omct.org/files/2014/11/22956/v4_web_onusien_en_omc14.pdf; *see also* ФОРМА ЖАЛОБЫ, http://litigation.by/komitet-oon-po-pravam-cheloveka/zhaloba-v-komitet-oon-po-pravam-cheloveka/forma-zhaloby (last visited Feb. 13, 2017) (explaining how to file a communication to the HRC in Russian); CLAIMING HUMAN RIGHTS, GUIDE TO INTERNATIONAL PROCEDURES AVAILABLE IN CASES OF HUMAN RIGHTS VIOLATIONS IN AFRICA, http://www.claiminghumanrights.org/ccpr_individual_communications.html (last visited Feb. 13, 2017) (for applicants from African countries); A CONSCIENTIOUS OBJECTOR'S GUIDE TO THE INTERNATIONAL HUMAN RIGHTS SYSTEM, HUMAN RIGHTS COMMITTEE: COMMUNICATION PROCEDURE, http://co-guide.info/mechanism/human-rights-committee-communication-procedure (last visited Feb. 13, 2017); INTERNATIONAL JUSTICE RESOURCE CENTER, HUMAN RIGHTS COMMITTEE – INDIVIDUAL COMPLAINTS, http://www.ijrcenter.org/un-treaty-bodies/human-rights-committee/#Individual_Complaints (last visited Feb. 13, 2017).

subjects, and then informing other NGOs about the new jurisprudence on the subject and helping them litigate similar cases.[144]

If a person or his representative is already aware of the possibility of filing a communication to the HRC, it seems that the process is somewhat more accessible. On the website of the Office of the High Commissioner for Human rights, there is a special section dedicated to the HRC.[145] This section includes explanations about the process of filing communications to the HRC in a language that is supposed to be understandable to people without legal education. Moreover, on the main page of the HRC webpage it is even possible to find a model complaint with a checklist of required supporting documents. However, some interviewees mentioned that the online explanation about how to file a communication should be much more detailed, and that a person without legal education might have trouble with understanding it.[146]

The HRC webpage also has a section with its recent jurisprudence.[147] However, only recently a possibility to search by treaty article or by subject has been added. Before that, the relevant jurisprudence was not very accessible even to lawyers. It should be noted that there are several websites, not officially associated with the UN, that have better options of searching for the relevant jurisprudence.[148] Two interviewees indeed raised the problem that the jurisprudence of the HRC is not very accessible through the website, and it is hard to conduct proper legal research before filing a communication.[149]

Another important question that might help us shed light on the accessibility of the HRC is whether an *alternative tribunal existed for the claim*, and if so, what was the reason for bringing the communication specifically to the HRC. When asked whether they believed that an alternative international human rights tribunal existed for their

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[144] # 26.
[145] UNITED NATIONS OFFICE OF THE HIGH COMMISSIONER, HUMAN RIGHTS COMMITTEE http://www.ohchr.org/EN/HRBodies/CCPR/Pages/CCPRIndex.aspx, (last visited Feb. 13, 2017).
[146] # 9, 10, 12, 15, 22.
[147] UNITED NATIONS OFFICE OF THE HIGH COMMISSIONER, JURISPRUDENCE http://juris.ohchr.org/en/search/results?Bodies=8&sortOrder=Date, (last visited Feb. 13, 2017).
[148] BAYEFSKY.COM, THE UNITED NATIONS HUMAN RIGHTS TREATIES, http://www.bayefsky.com/ (last visited Feb. 13, 2017); REFWORLD, UN HUMAN RIGHTS COMMITTEE, http://www.refworld.org/publisher,HRC,CASELAW,,,,0.html (last visited Feb. 13, 2017); CCPR – CENTER FOR CIVIL AND POLITICAL RIGHTS, INDIVIDUAL COMMUNICATIONS, http://ccprcentre.org/database-decisions/, (last visited Feb. 13, 2017).
[149] # 9, 18.

claim (questions 8-9), 40.6% of the interviewees answered in the affirmative. Also, half of those interviewees indicated that this alternative tribunal was the European Court of Human Rights. The interviewees were also asked why they preferred the HRC over the alternative tribunal (question 10), and the answers were very diverse. The reasons for choosing the HRC over the alternative tribunals can mainly be divided into two– procedural reasons and reputational reasons. The procedural reasons mentioned were: that the HRC was more efficient than the alternative tribunal,[150] it was easier to file a communication there,[151] the process cost less money,[152] easier to go through the preliminary screening of admissibility,[153] the HRC was more likely to grant quickly interim measures,[154] the HRC had more flexible time frames to file communications,[155] and that they were more knowledgeable regarding the procedures before the HRC rather than before the alternative tribunal.[156] Among the reputational reasons for filing a communication it was mentioned that: the HRC was more high profile than the alternative tribunal,[157] the HRC was more authoritative and had a stronger mandate,[158] the HRC was more open to hear also low key cases,[159] and that the decisions of the HRC were more credible.[160] Finally, one of the interviewees mentioned choosing the HRC because it was part of the UN system.[161]

It seems that the process of filing a communication is quite simple. According to the website of the High Commissioner for Human Rights, the communication can be sent in one of three ways–via email, regular mail, or fax (the latter especially for urgent matters).[162] When asked about the *method of filing a communication* to the HRC

[150] # 6, 13, 21, 29
[151] # 4, 6, 29.
[152] # 4, 29.
[153] # 10.
[154] # 19.
[155] # 8.
[156] # 16.
[157] # 16.
[158] # 20, 27, 32.
[159] # 10.
[160] # 11.
[161] # 32.
[162] UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER, PROCEDURE FOR COMPLAINTS BY INDIVIDUALS UNDER THE HUMAN RIGHTS TREATIES,

(question 26), there seemed to be no special preference to either method–one third of the interviewees indicated that they filed the communications only via email, and one third of the interviewees mentioned filing only via regular mail. 23.3% mentioned that they filed both by email and by regular mail, and the rest indicated that they filed via fax. Several interviewees expressed a concern that their countries had (or could have had) interfered with regular mail that they wanted to send to the HRC.[163] One interviewee even mentioned that he used to send mail to the HRC through a third country, because he was afraid that the government monitored the mail services, and therefore could have prevented important mail from reaching the HRC.[164] Another interviewee also mentioned in this regard that the mail of the correspondence with the HRC is always opened and read by the government before it reached its destination.[165]

Another factor that could pose a problem to the accessibility of the HRC is the *requirement to exhaust domestic remedies*. As in most other international tribunals,[166] the applicants are required to exhaust all possible domestic remedies before bringing a communication to the international level.[167] The question, in this regard, is how closely the tribunal follows this rule, and whether it makes any exceptions to it. The OP itself states in article 5(2)(b) that domestic remedies should not be exhausted when "the application of remedies is unreasonably prolonged."[168] Additionally, according to the jurisprudence of the HRC, the available remedy should be an "effective" one.[169] Therefore, in states with authoritarian regimes, many times the HRC was much more open to hear cases even if the applicants had not exhausted all the possible national remedies.[170]

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http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/IndividualCommunications.aspx#proceduregenerale (last visited Feb. 13, 2017).

[163] # 2, 23.

[164] # 2.

[165] # 23.

[166] EGAN, *supra* note, 97 at 277; TYAGI, *supra* note 96, at 479.

[167] Optional Protocol, *supra* note 77, at arts. 2 & 5(2)(b); Rules of Procedure, *supra* note 89, at rule 96(f).

[168] *See* Lubuto v. Zambia (390/1990) ICCPR, CCPR/C/55/D/390/1990/Rev.1 (Oct. 31, 1995); Rajapakse v. Sri Lanka (1250/2004) ICCPR, CCPR/C/87/D/1250/2004 (Sept. 5, 2006).

[169] TYAGI, *supra* note 96, at 494-96.

[170] *Id.* at 496; Bahamonde v. Equatorial Guinea (468/1991) ICCPR, CCPR/C/49/D/468/1991 (Oct. 20, 1993); Kodirov v. Uzbekistan (1284/2004) ICCPR, CCPR/C/97/D/1284/2004 (Dec. 3, 2009).

When asked whether domestic courts were impartial in deciding the case (question 3), 63.33% of the interviewees answered that they thought that the domestic courts were *not* impartial, but rather influenced, to some degree, by the government. However, all but two of the interviewees actually claimed to have exhausted all possible domestic remedies before bringing a communication to the HRC (question 4). The two interviewees who mentioned that they had not exhausted domestic remedies explained that the reason for that was the heavy political influence on the courts in those states.[171] When asked about exhaustion of domestic remedies, almost all the interviewees pointed out that they had no other choice than going through the whole domestic procedure, and that they did not even consider bringing a communication to the HRC without doing so. This may indicate that this requirement is seen as very essential, and therefore potential applicants and their representatives are afraid to take the risk that their communication would be declared inadmissible, despite the fact that in many of the countries the judicial system is influenced by the government.

When asked whether the sate attempted to argue that the communication was inadmissible on the grounds of lack of exhaustion of domestic remedies (question 5), half of the interviewees answered that such a claim was actually made by the state. However, only five interviewees mentioned exhaustion of domestic remedies as an obstacle to the accessibility of the HRC.[172] One of them suggested that perhaps in problematic countries with known problems, the HRC should not insist on this admissibility criterion.[173] Another interviewee said that proving the exhaustion of domestic remedies had been a real problem to many people from his country, since there is no local culture of documenting all official government actions.[174] Finally, one of interviewees also mentioned that his NGO sometimes raises money specifically for domestic litigation in order for them to be able to access the HRC after that.[175]

As discussed earlier, *money and other resources* needed to access a legal institution have been long regarded as one of the most important aspects of access to

[171] # 7, 16.
[172] # 12, 13, 14, 15, 28.
[173] # 12.
[174] # 13.
[175] # 24.

justice. Even though the HRC does not have a litigation fund as some of the regional systems have, from the descriptive statistics about representation, it seemed that the HRC was very accessible. As mentioned above, in around 40% of the decisions it was not indicated that the applicant had been represented. However, following the interviews, a few doubts could be cast on the authenticity of this number. First of all, among the interviewees that represented themselves in the study, everyone either had legal education or was a prominent human rights activist. An interviewee from a country against which many communications are filed sounded very doubtful that people without legal or human rights education would be able to file communications by themselves. He told me that in many cases, even if no representative in a communication against his country had been mentioned, he knew who he was.[176] Moreover, when interviewees were asked whether they had helped applicants to file communications without being officially listed as the representatives (question 15), 42.85% of the interviewees answered in the affirmative. However, another interviewee who works for an NGO, said that she did get to know a few people who managed communications by themselves from the beginning until the end.[177]

The reasons for choosing not to be listed as representatives were diverse. The most common reason was fear of retribution by the state. Some interviewees mentioned that whereas they always chose to be mentioned as the representatives (among others because they thought that they had an ethical responsibility to do that), they said that they were familiar with lawyers who chose not to be officially listed as representatives because they feared state retribution.[178] This answer was especially common among lawyers from countries with a problematic human rights record. Some representatives did not want their names to be mentioned in very political cases, and this was true even for representatives from democratic countries. Others mentioned that they were not always listed officially as the representatives because the applicant had done himself the main work, and they only gave general (or specific) advice.[179] It was also mentioned by an interviewee that his colleagues sometimes preferred not to list themselves as the

[176] # 2.
[177] # 29.
[178] # 2, 24.
[179] # 12, 11, 15, 29.

representatives because they believed that the HRC treats unrepresented applicants more favorably.[180] Finally, it was also mentioned that sometimes representatives chose not to be officially listed because others had already been listed in that capacity.[181] Therefore, even though from the quantitative part there was an impression that the HRC was very accessible in this regard, the interviews discovered that the picture is probably quite different.

When asked about *payment* for assistance to file a communication (question 19), 75% of the interviewees answered that they handled the communication as a pro-bono case, and that the applicant did not pay for it. As mentioned, some interviewees from NGOs mentioned that they had special fund-raising for litigation, since they actually never ask the applicants for money for representation before the HRC. It should be noted in this regard, that the fact that so many of the interviewees mentioned that they had not been paid should not necessarily be taken as representing the reality. This is because probably NGOs and lawyers handling cases pro-bono would be more likely to be responsive to an invitation for an interview, as compared to lawyers who were paid regular fees for representation. Regarding the other options, only three interviewees mentioned that the applicant himself paid for legal services, one interviewees said that another NGO paid for the representation,[182] and two interviewees mentioned that the government against which the communication had been brought paid the fee.[183] Finally, one of the interviewees refused to disclose who paid for the representation.

As for the *amount of resources*–both time and money invested in the communications, the answers were very diverse. In general, interviewees were not very keen to talk about the amount that they had paid or had been paid for their work, and some refused to answer the question. Those who did agree to answer, mentioned an amount between 4,500$ and 6,800$. An interviewee who represented a case with many applicants, said that each applicant paid him around 115$. When asked about the hours that it took to work on the communication, the answers were very diverse, and it seemed

[180] # 2.
[181] # 11.
[182] #4.
[183] # 19, 10.

that it mainly depended on how novel the case was, how complex were the facts of the case, and whether the representative was familiar with the facts of case from the national proceedings.[184] The answers varied from 15 hours, for a "standard" deportation case represented by a lawyer who represented the applicant in the national proceedings, to "hundreds of hours" for a case in which the NGO wished to set a new precedent on a subject that the HRC did not have significant jurisprudence.

The next criteria to be examined is that of *persecution and harassment by the state*.[185] The persecution and harassment of individuals and groups cooperating with the UN treaty bodies is a known problem. Therefore, in July 2015 the chairpersons of the treaty bodies met and wrote together the "Guidelines against Intimidation and Reprisals ("San Jose Guidelines")."[186] It seems that people filing individual communications to the HRC are especially prone to persecution, since according to the OP, anonymous communications are not allowed.[187] Therefore, par. 19 of the San Jose Guidelines reads as follows:

> When it is alleged that an individual or group is at risk of intimidation or reprisals for seeking to communicate or for having communicated with a treaty body, including as a result of filing or of considering or attempting to file a formal complaint to a treaty body in the framework of the individual communications procedures, the committee concerned can request the relevant State party to adopt protection measures for the individual or group concerned. Such measures can include requests to refrain from any acts of intimidation or reprisals and to adopt all measures necessary to protect those at risk. The State party may be requested to provide the

[184] While some representatives have helped the applicants in the national proceedings, others worked on the case only on the level of the HRC. Obviously, it took more time for the latter to work on the case, since they had to familiarize themselves with the facts and legal arguments.
[185] Since this is a very sensitive topic, I chose not to indicate the number of the interviewees cited.
[186] Chairpersons of the Human Rights Treaty Bodies, 27th Meeting, *Guidelines against Intimidation or Reprisals ("San José Guidelines")*, HRI/MC/2015/6 (July 30, 2015).
[187] Optional Protocol, *supra* note 77, at art. 3.

> committee, within a specific deadline, with information on measures taken to comply with the request.

Indeed, persecution was probably the most sensitive topic raised during the interviews, and, unsurprisingly, many interviewees were hesitant to speak about their personal experiences. Some were more open to discuss the experiences of others on this subject, but not their own. This is how one of the interviewees, who works for an NGO, described the situation in one of the more problematic countries in this regard:

> the government itself and that opposition party and police and secretary persons, they try to harass us. They try to make hurdles in our working moralities. They often ...Now, [...] now there are so many things. They always harass to that victims, witnesses as well. These people, they also exaggerate things. They [...] on lies, yeah?
>
> [...]
>
> They try to manipulate the victims and, "These people are not working in favor of you." That, "These people are just like doing that dollar business, business of dollars. They are just, like, they are spy of ours." That, "They are working for that international community and that international people." Blame is there from one side, and other side the harassment and psychological torture, and sometimes, threats to the victims and manipulation to the victims. These are things that commonly happen in [the country]. Yeah.

Another interviewee, a human rights lawyer from a very democratic country, answered the question about state retribution in this manner:

> No, nothing we have detected, but it does operate at a different level. There is a chilling effect, because typically in

> response to UN findings, conservative governments like this one routinely come out and say, "We're not going to be bullied by bureaucrats in Geneva. We're a sovereign country. We get to decide what happens in our country." There's quite a strong negative reaction amongst conservatives in [the country]
>
> [...]
>
> No, obviously from time to time, senior politicians, ministers, including the Attorney-General, come out and say mean things about me in the media, but I can live with that.

When asked whether the *applicant* was afraid of harassment or persecution (question 21), 25% of the interviewees answered in the affirmative. It seems that the *representatives* themselves were less afraid of harassment or persecution (question 22), and only 3 representatives mentioned that they were afraid of those. When asked why the applicant or the representative were afraid of persecution or harassment (question 23), the most common answers were that they either personally experienced it in the past for being involved in human rights activities, or because it was widely known that the government mistreats human rights activists. Two interviewees also mentioned that their main fear was not for themselves but for their families. Some of the interviewees mentioned that they were not afraid of persecution and harassment only because they were already used to those from being human rights activists. Also, several interviewees mentioned that they had known people who chose not to file communications because they feared state persecution. Finally, some of the representatives (mainly NGOs) mentioned that they were not afraid of state persecution because they worked in different countries than the country against which communication was filed.

When asked whether the applicant or the representative had actually felt persecution or harassment (question 24), one third of the interviewees answered in the affirmative. There were several ways in which interviewees had been persecuted, or knew about others being persecuted, following the filing of a communication to the HRC (question 25). First, it was mentioned that the applicants were summoned many times

to the local police for different questionings, and also police searches were conducted in their homes. Additionally, several interviewees mentioned initiating criminal proceedings against them for false allegations, and steps like disqualifying the lawyer representing in the case from being a member of the local bar association. One interviewee also mentioned administrative arrest following the initiation of proceedings before the HRC. Another form of harassment mentioned was constantly asking the person to file taxes, even if he was under no legal obligation to do so. It was also mentioned that sometimes police and government officials try to persuade people and their families not to file (or withdraw) communications, and that people were harassed even at their workplace.

Another form of harassment mentioned was government officials trying to make the applicants sign statements which contradicted their claims in the communications. Some of the representatives even mentioned that at times they worked to convince the applicants not to withdraw their communications following state persecution. It might be suggested that certain groups are more prone to the fear of harassment than others– for instance, one interviewee mentioned that he knew a gay person who was afraid of bringing a communication regarding discrimination on grounds of sexual orientation in a country which is very conservative on those issues. In another case that involved minority rights, a minority, which had already been discriminated against, was afraid that the discrimination would increase following the filing of the communication. Finally, in death penalty cases it was mentioned that there was a fear that the state would implement the sentence faster before there was a final decision by the HRC.

Additionally, sometimes harassment also takes a "public" form–some interviewees mentioned that they were portrayed by politicians and by the local media as "traitors" who damage the national interest by bringing out problems to international institutions. One of the strategies for avoiding harassment was keeping the filing of the communication secret. In those cases the government found out about it only after it was officially required to submit a response by the HRC, and the chances of persecution were lower.

Whereas one interviewee mentioned that the harassment measures by the government were severe but not life threatening, another interviewee said that the authorities had sent him actual death threats. An additional interviewee even mentioned that he had to flee the country because the state persecuted him for bringing cases to international institutions, including a communication before the HRC. An interviewee also mentioned that in one of the cases which he represented before the HRC, the applicant decided eventually not to ask for implementation of the decision on the national level, because he was afraid of persecution.

The next criteria of access to justice is the *quality of the remedy* provided by the HRC. The common practice of the HRC currently is to indicate both a specific remedy for the applicant in the communication, and general measures that the state needs to undertake in order to ensure that the violation does not occur again.[188] Among the remedies that the HRC has prescribed in recent years can be found a general "effective remedy," as well as more specific remedies such as adequate compensation,[189] public apology,[190] commutation of the death sentence,[191] retrial,[192] effective investigation,[193] and prosecution of individuals who allegedly violated human rights of the applicant.[194] Unlike some other international tribunals, the HRC never indicates the amount of the compensation which should be paid to the applicant, and leaves it *de facto* to the state itself to determine.[195]

When asked about the remedy that they received (question 30), the interviewees indeed indicated all the remedies mentioned above. Although the HRC is often criticized for not providing detailed enough remedies,[196] 72% of the interviewees stated that the remedies mentioned in the decision of the HRC were detailed enough (question 31). However, some interviewees also answered the question in the affirmative with reservations–for instance, one of the interviewees mentioned that the remedies were

[188] TYAGI, *supra* note 96, at 556.
[189] Shchetko v. Belarus (1009/2001), ICCPR CCPR/C/87/D/1009/2001 (Aug. 8, 2006).
[190] Lecraft v. Spain (1493/2006), ICCPR CCPR/C/96/D/1493/2006 (July 30, 2009).
[191] Chisanga v. Zambi (1132/2002), ICCPR CCPR/C/85/D/1132/2002 (Nov. 3, 2005).
[192] Kurbonov v. Tajikistan (1208/2003), ICCPR CCPR/C/86/D/1208/2003 (March. 16, 2006).
[193] Medjnoune v. Algeria (1297/2004), ICCPR CCPR/C/87/D/1297/2004 (Aug. 9, 2006).
[194] Madoui v. Algeria (992/2001), CCPR/C/94/D/1495/2006 (Dec. 1, 2008).
[195] TYAGI, supra note 96, at 556.
[196] *Id*. at 559.

detailed enough only because the respondent country was a country with a good human rights record.[197] Another interviewee answered that while in this case the remedies were detailed, in other cases which he represented before the HRC the remedies were not detailed enough.[198]

Among those who answered that the remedy was not detailed enough, the following reasons were mentioned. First, it had been claimed that the HRC did not elaborate enough as to how the administrative procedures and laws which were the subject of the communication should have been amended.[199] Two other interviewees complained that although it was absolutely clear that the legislation should be changed so that the country would not be in violation of the ICCPR, the HRC avoided saying that in a straightforward manner.[200] Also, some interviewees mentioned the lack of indication of the amount of compensation as a major problem with the remedy given.[201] It was suggested that leaving the determination of the exact amount to the respondent state made it easier for the state to avoid implementing the decision.[202] Finally, one interviewee mentioned that some of the unclearness in the remedy was resolved during the follow-up procedure with the special rapporteur.[203]

Since the state is the one that eventually has to implement the decision of the HRC, a very important criterion is the *hardship to implement the decision on the domestic level*. As mentioned above, there is a debate regarding the normative status of the decisions under the OP. Therefore, perhaps unsurprisingly, according to the report of the Open Society, only 12.27 % of the HRC decisions under the OP have been fully implemented.[204] When asked whether the decision had been implemented by the state (question 35), only 2 of the 23 interviewees answered that the decision was indeed fully

[197] # 29.
[198] # 20.
[199] #9, 13, 24.
[200] #14, 30.
[201] #9, 14, 24, 26.
[202] # 24.
[203] # 24.
[204] *See* OPEN SOCIETY JUSTICE INITIATIVE, *supra* note 54, at 199 (defining "satisfactory implementation as "the *willingness* of the State party to implement the Committee's recommendations or to offer the complainant an appropriate remedy");

implemented by the respondent state.[205] 57% of the interviewees answered that the decision was not implemented, and 35% of the interviewees answered that there was partial implementation.

When interviewees who indicated partial implementation were asked to elaborate, they answered that in some cases the states did try to "remedy" the damage caused to the specific victim by paying the applicant monetary compensation, but did not amend the wider legislative framework to prevent future violations.[206] In other cases, even the damage caused to the applicant himself was not fully remedied–in one case the applicant was extradited, contrary to the decision of the HRC, but the state showed willingness to give monetary compensation.[207] In another case, the applicant was released from custody, but did not receive compensation.[208] Also, one interviewee mentioned that the law was amended only in order to remedy the specific violation to the applicant.[209] Another interviewee mentioned that the state agreed to grant the applicant retrial regarding his application for asylum, but eventually, contrary to the decision of the HRC, did not grant him asylum.[210] Finally, sadly, in one case the interviewee mentioned that the state did not wait for the final decision of the HRC and executed the applicant,[211] and in another case the applicant was deported from the country before the HRC reached a decision in his application.[212]

An additional and important element of the implementation on the domestic level, is whether the applicant has to undergo additional proceedings on the national level, or whether the decision is implemented automatically by the state. When asked about this (question 36), 58.33% of the interviewees mentioned that they had to undergo additional proceedings in order for the state to implement the decision of the HRC. The rest of the interviewees mentioned that they did not have to initiate additional proceedings on the national level. In this regard, one of the interviewees from a state against which many communication to the HRC are filed, mentioned that a group of

[205] This question was relevant only to for decisions in which the HRC found a violation of the ICCPR.
[206] # 8, 12, 29.
[207] # 22.
[208] # 6.
[209] # 25.
[210] # 4
[211] # 2
[212] # 6

human rights activists and lawyers are trying promote legislation that would indicate exactly how the decisions should be implemented on the national level, since it is currently unclear.[213]

Finally, I also asked interviewees about *other difficulties and concerns* that they had about the process before the HRC (questions 27 and 32). The main concern that was raised by no less than twenty interviewees was the time that it takes the HRC to process the communication and to reach a final decision.[214] As mentioned above, the average time between the registration and a final decision on the case was 3.5 years.[215] One interviewee also mentioned the fact that procedures are too prolonged because the secretariat does not insist on time frames with states:[216]

> A few things which came up which were really frustrating along the way. One was that the Committee provides time frames within which the state must respond to the committee. [the state] routinely ignores those time frames, whether it's 3 months or 6 months, depending on the phase, they're different. Those are firmly written in the rules. When we complained about that, that [the state] was routinely late, and by late I don't just mean weeks or days, I mean in one case a year later, so there's a guy sitting in detention and yet you're waiting up to a year for the government to respond to your submission. The Committee doesn't do anything about it. The Committee might send a little letter to the state reminding them or something, or they might not. We never really know, because they don't really tell us. There's no serious pressure brought by the Committee. The Committee just cops it. They just accept that governments can accept

[213] # 24
[214] # 1, 2, 3, 5, 6, 7, 9, 11, 12, 13, 15, 16, 20, 22, 23, 24, 26, 27, 28, 29, 30.
[215] REPORT OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, STRENGTHENING THE UNITED NATIONS HUMAN RIGHTS TREATY BODY SYSTEM 19 (2012) [hereinafter *High Commissioner Report*].
[216] # 20.

> whenever they like. That's pretty frustrating, because what's the point of rules of procedure if they don't mean anything?

On the other hand, other interviewees said that the procedure before the HRC was faster than expected.[217]

Another significant problem mentioned was a language barrier.[218] The United Nations has six official languages (English, French, Spanish, Russian, Arabic and Chinese),[219]and a communication can be filed only in one of those languages. Therefore, interviewees indicated that when the language of the state was not one of the six official languages, it was at times burdensome to translate all the documents into one of those languages. In this regard, one of the interviewees said that the European Court for Human Rights might be better for applicants if they were found under its jurisdiction, since it is possible to file there a communication in the language of the country.[220] One of the interviewees mentioned that if they filed the communication in English, the cost of translation to the language of the respondent state many times falls on the shoulders of the applicants themselves. This is because the secretariat does not have sufficient resources to do it on its own.[221] Also, another interviewee said that even though Arabic is an official UN language, there is still a preference to file a communication in English.[222]

Finally, some interviewees found the inability of the HRC to hold oral hearings and reevaluate facts as a significant barrier to the accessibility of justice.[223] It was also mentioned by some that the process is complicated and unclear, and therefore it is very hard to plan litigation in a strategic way.[224]

iii. Inter-Personal Impressions from the Process

[217] # 8, 18, 19, 20, 25, 31, 33.
[218] # 4, 8, 22, 26.
[219] DEPARTMENT FOR GENERAL ASSEMBLY AND CONFERENCE MANAGEMENT, FREQUENTLY ASKED QUESTIONS (FAQS) http://www.un.org/depts/DGACM/faqs.shtml (last visited Feb. 13, 2017).
[220] # 4.
[221] # 26.
[222] # 7
[223] # 10, 13, 17, 23.
[224] # 12, 20.

Regarding the *communication with the UN staff during the process*, there seemed to be quite a diverse spectrum of opinions. When asked whether the secretariat kept the interviewees updated about the progress in the communication (question 33), half of the interviewees answered in the affirmative. However, in the more open questions (questions 27 and 32), many of the interviewees were much more critical of the way in which the secretariat operates. One interviewee, who is a lawyer, described his experience as follows:[225]

> In this particular case, I do remember that in the beginning they lost the file, so we had to, after some months, because we were following up with them, because we hadn't gotten an acknowledgement letter, because usually you get a letter in about a month saying, "Thank you for your communication, blah, blah, blah," and they didn't give us that. We had to chase them up for months, and then they finally said that they lost the file, they admitted receiving it, and then said that it had been misplaced. We actually had to send them another one, and I remember at the time that my client was quite upset about that, because he was hoping that they would help him. He was saying that he was wrongfully in prison, and obviously he wanted a quick process, as quick as possible, so literally some months were wasted just because they lost the files. He was quite disappointed in that, obviously.

The most common complaints were that the secretariat was inefficient, lacking resources, not professional and understaffed.[226] It seems that all the other complaints about the secretariat stemmed from these problems. For instance, it was mentioned that it had been hard to reach the secretariat in order to ask questions (especially regarding the progress in the communication), and that the staff was not very responsive even to

[225] # 5
[226] # 7, 26, 2, 16, 5, 6.

emails.[227] Some interviewees mentioned that at times the secretariat did not respond to emails at all.[228] Another interviewee said that whereas the secretariat was responsive to emails, it agreed to provide only very basic and general information regarding the case.[229] It was also mentioned that the secretariat did not acknowledge the receipt of a communication (or other documents), that it was unclear how much time would it take for the secretariat to register the claim, and also hard to find out whether the communication had been registered at all.[230] Another interviewee complained about loss of documents.[231]

As for the more substantive work of the secretariat, the interviewees said that the decisions of the secretariat were arbitrary and not comprehensive. Interviewees also mentioned that many times it seemed that the secretariat did not read the material sent to it, since there were factual mistakes in the documents that it sent them back (for instance, claimed that a certain document was not provided, when in fact it was) and that the documents discussed irrelevant points.[232] Finally, interviewees said that the secretariat did not follow up on its own initiative whether the state sent an answer to the communication (at all or within the time frame prescribed), and that sometimes the interviewees themselves had to remind the secretariat about this.[233]

Even though there seemed to be some discontent from the way in which the secretariat operated, when it came to the question of the *fairness* of the process itself (question 34), 82.75 % of the interviewees regarded the process before the HRC as fair. Among the reasons that the interviewees mentioned as undermining the fairness of the process were the lack of transparency, lack of information from the secretariat, and lack of a "personal touch" in handling communications.[234] It was also mentioned that the legal reasoning of the HRC was unclear and that the decisions seemed arbitrary.[235] One

[227] # 23, 22, 16, 17.
[228] # 2.
[229] # 10.
[230] # 22, 3, 23.
[231] # 5.
[232] # 20, 5, 22, 14.
[233] # 20, 32, 7.
[234] # 5, 17, 22, 31.
[235] # 5, 22.

interviewee thought that the decisions were influenced by politics.[236] Finally, another interviewee mentioned that he never got a chance to see the answer of the state to the communication, and therefore was not given a proper chance to write a response to it.[237]

Even though from the previous questions it seemed that the interviewees thought that there were significant flaws with the individual communications system, when asked whether they would *encourage other people to file communications* (question 44), 93.5% of the interviewees answered in the affirmative. The same percentage of interviewees also stated that they would *consider filing another communication to the HRC* themselves in the future (question 46).

When asked why would they recommend others to bring a communication to the HRC, the main, and perhaps obvious, reason was that the decisions of the HRC could be implemented by the state now or in the future, and perhaps influence the way in which the state acts in similar cases.[238] One of the interviewees even mentioned that the more cases there were against a state, the higher were the chances that the state would eventually implement the decisions of the HRC.[239] An additional reason that many interviewees mentioned was that it is beneficiary to have access to an independent international body monitoring the implementation of the ICCPR.[240] It was also suggested that the HRC is less political than other national and international institutions,[241] and faster than the regional systems.[242] Another direction of answers was that filing communications to the HRC raised the awareness to human rights violations,[243] documented and recognized human rights violations,[244] and that it was important for a person to insist on his legal rights against the violating state.[245] Several applicants even mentioned that they actively encouraged other lawyers and NGOs to file

[236] # 12.
[237] # 31.
[238] # 2, 14, 19, 22, 23, 25, 26, 28.
[239] # 3.
[240] # 5, 8, 9, 10, 18, 29.
[241] # 10.
[242] # 29.
[243] # 1, 2, 8, 20.
[244] # 2, 7, 11, 16.
[245] # 17.

communications,[246] and even ran a special program that trains lawyers and NGOs how to file communications to the HRC.[247] Finally, several interviewees mentioned that filing communications to the HRC was important in order to develop the jurisprudence of international human rights law.[248]

On the other hand, some interviewees mentioned that they would recommend filing a communication to the HRC only if there were no other fora to bring the case.[249] Additionally, two of the interviewees mentioned that they would not recommend filing a communication to the HRC because the decisions of the HRC are not implemented by states.[250] When the interviewees were asked why they would prefer not to file communications to the HRC in the future,[251] the reasons were lack of implementation and that filing communications that were not implemented by the state harms the reputation and credibility of the NGO.[252]

The interviewees were also asked whether they believed that the decision in their case had *an impact beyond the specific case* (question 37), and 74.1% of the interviewees answered that they believed that the decision in their case did have a wider impact. The reasons for that were various. Some interviewees believed that it influences, or might influence in the future, the behavior of the authorities in their countries.[253] It was also mentioned that it empowers other people from their state to insist on their human rights in various situations.[254] Others mentioned that the impact was more international, like development of jurisprudence on a certain subject,[255] or drawing international attention to a problem.[256] Also, two interviewees spoke in terms of "empowerment of marginalized people,"[257] and "giving hope."[258]

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[246] # 3, 11, 13.
[247] # 11.
[248] # 1, 16, 18.
[249] # 15, 17, 18.
[250] # 12, 30.
[251] # 12, 30.
[252] # 12.
[253] # 1, 2, 7, 8, 9, 14, 22, 23, 24.
[254] #2, 12, 13, 23.
[255] # 6, 12, 16, 18, 20, 27, 31, 32.
[256] # 13, 14, 20.
[257] # 29.
[258] # 28.

V. DISCUSSION OF THE FINDINGS AND SUGGESTIONS FOR POSSIBLE REFORMS

This part evaluates the success of the access to justice under the OP from the perspective of the three main stakeholders–the member states, the HRC and the applicants. Additionally, it also suggests ways to make the HRC more accessible, in light of the empirical findings of this study, and the suggestions brought in previous literature about access to justice. I also include relevant suggestions from interviewees (question 45). It should also be noted, that in 2012 the High Commissioner for Human Rights issued a report on strengthening the United Nations human rights treaty body system. [259] Although the discussion in the current article is limited to specific reforms in the context of the individual communications in the HRC, I provide references to the relevant pages in the Report in the footnotes.

A. Universality and equality of access to the HRC

When we examine the universality and equality of access to the HRC criterion, there seems to be a significant problem with the system. This criterion is of special importance, since, as mentioned, from the Preamble of the ICCPR and the OP, it seems that the main goals of the individual communications procedure were universality of implementation of human rights. As was evident from the quantitative part, the system probably failed in this regard. The low number of communications brought as well as the fact that they are mainly filed against states that have a strong political and socioeconomic background, speaks for itself. It seems fair to say that the system is very much underused and could reach much more people. This is especially disappointing, since as it is today, all the procedure takes place in writing (without oral hearings), and therefore geographical distance from Geneva should not be an obstacle. Also, given that access to international institutions is seen as an important tool for promoting marginalized people and communities, it is troublesome that people from non-democratic and less socio-economically developed countries, who might be the ones

[259] *See* High Commissioner Report, *supra* note 215 (discussing a wide reform of the treaty system, and included a proposal to unify the treaty bodies). *See also* Shany 2013, *supra* note 81 (providing a critique and a discussion of the Report); *See also* Anthony J. Ellis, Developing Human Rights before the United Nations Human Rights Committee and in New Zealand Courts: A Practitioner's Perspective 221-7 (2014) (unpublished PhD dissertation, on file with the author) (arguing that in the context of New-Zealand the main problems are lack of awareness, education, resources and political will).

who need the most to bring their story before an international instance, are the ones that have less access to it.

The finding that the access to the HRC is not distributed equally among different types of countries should be seen as problematic regardless of the question whether the role of the system is to grant a remedy implemented on the national level, general guidelines for member states, or just a platform for victims to tell their story. It might be assumed that people under the jurisdiction of states which are democratic and with socio-economically developed bring different types of communications to the HRC than people under the jurisdiction of poor and authoritarian states. Even if one rejects the role of the HRC as providing a remedy in a specific case, there is a general importance to have applicants from different backgrounds bringing different subject-matter communications before the HRC so that there would be diverse jurisprudence answering many needs. Moreover, there is a special significance to give people from more problematic states a platform to tell their stories to an international body.

However, there is a serious doubt whether the system as it is today is even capable of handling more individual communications. As it currently stands, with less than 150 decisions on individual communications each year, the average time period for a decision is 3.5 years. Even with this (relative to the potential) small number of communications, the impression from the interviews was that both the secretariat and the HRC itself have a substantial difficulty to keep up with the pace. Therefore, any attempt to make the HRC more accessible will have to take into account that the resources provided to the HRC should be increased significantly as well–mainly more staff and more financial resources.[260]

A more cynical perspective on the situation might suggest that countries with a problematic human rights record, which are also stakeholders for this purpose, could be satisfied with the situation. On the one hand, they have the international prestige of being a signatory to the OP, but on the other hand, the HRC is not sufficiently accessible to applicants from those countries. Therefore, those countries do not pay a price for their actual human rights violations. Such a "misuse" of the system should not be

[260] *See also* HIGH COMMISSIONER REPORT, *supra* note 215, at 71-72 (recommending that the Committees encourage friendly settlements within the individual communications procedures).

regarded as a legitimate interest of a stakeholder according to the rules of interpretation provided in the Vienna Convention on the Laws of Treaties.[261] However, around 60% of the HRC budget comes from voluntary contributions from member states,[262] and providing the HRC with more resources very much depends on the will of member states. Therefore, this hidden interest of some states to make the HRC inefficient might create a lack of political will to actually change the situation and give the HRC more funding. It should be noted that whereas most of the suggestions to follow would indeed demand a significant addition to the budget, some of them might not be as expensive and hence perhaps more realistic in the short term.

B. Difficulties to Access the HRC

The interviews with people who filed communications to the HRC revealed quite significant difficulties with accessing the HRC. Unsurprisingly, the most troubling issue discussed was *persecution and harassment* by the state. This issue can also explain why we see less communications from states with a problematic record of human rights. There is no "magic solution" to this problem, since it is very much entwined with the difficulty of making states comply with their general human rights obligations. However, the San-Jose Guidelines are a good starting point since they acknowledge that such a problem indeed exists and they identify some possible ways to fight it. First, the Guidelines suggest that the Committees nominate a committee member that will serve as a rapporteur (or a focal point) for reprisals.[263] The main role of those special rapporteurs is to be the address for complaints for state reprisals against individuals and organizations, and determine the appropriate course of action.[264] The rapporteur should also compile information on good practices relating to protective approaches.[265] The treaty body itself is also encouraged to adopt protective measures in the appropriate

[261] Vienna Convention on the Law of Treaties art. 26, May 23, 1969, 1155 U.N.T.S. 331 ("[E]very treaty in force is binding upon the parties to it and must be performed by them in good faith"); *See also* Shany 2013, *supra* note 81, at 21-3 (discussing "what appears to be a conscious decision by a significant number of state-parties to maintain the treaty bodies under permanent conditions of under-effectiveness," and criticizing the High Commissioner for failing to acknowledge this problem).
[262] UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER, LATEST VOLUNTARY CONTRIBUTIONS TO OHCHR IN 2016 http://www.ohchr.org/EN/AboutUs/Pages/FundingBudget.aspx (last visited Feb. 19, 2017).
[263] San Jose Guidelines, *supra* note 186, at ¶¶ 8-14.
[264] *Id*. at ¶¶12-14.
[265] *Id*. at ¶ 17.

situations,[266] and to raise the awareness among member states to the necessity to the importance of cooperation regarding intimidation or reprisals.[267]

It should be noted, however, that it is necessary for the applicants to know about the existence of the special rapporteur, as well as to have an ability to access the rapporteur and receive a fast answer. From a search conducted by me on the internet on May 2016, it was unclear whether a special rapporteur had been indeed appointed, and how could he or she be contacted. This is a very acute concern, since there is a significant problem with responsiveness of the secretariat itself, and for issues as state reprisals (that can even be life endangering) a quick answer is crucial.

On the more optimistic side, 58 countries joined a statement read at the session of the Human Rights Council about preventing reprisals towards those who cooperate or seek to cooperate with the United Nations.[268] However, given that 115 states are parties to the OP, and that many states against which communications are often filed decided not to join the statement (most noticeably Belarus, Russia and Uzbekistan) there is place for concern.

Another important point was the *awareness* of the existence of the individual communications mechanism. When interviewees were asked what should be done in order to increase the accessibility of the HRC, the most common answer was raising the awareness to the possibility to file a communication to the HRC.[269] There are probably several actors that can be helpful in that regard: the HRC itself, the secretariat, states and NGOs. Since 2012 the Office of the High Commissioner attempts to make the procedures under the UN treaty bodies (including the HRC) better known. The efforts focused mainly on creating a mailing list and improving the website.[270] However, probably much more can be done in this regard, and the secretariat itself can be much more active in providing information through the internet about the possibility and procedures of filing communication. For instance, the secretariat can improve the

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[266] *Id*. at ¶ 19.
[267] *Id*. at ¶ 20.
[268] MISSION OF THE UNITED STATES TO GENEVA, U.S. JOINS HRC JOINT STATEMENT ON PREVENTING REPRISALS, https://geneva.usmission.gov/2015/09/25/u-s-joins-hrc-joint-statement-on-preventing-reprisals/ (last visited Feb. 13, 2017).
[269] # 1, 6, 12, 17, 3, 16, 23, 25, 28, 29, 9, 18, 15, 22.
[270] *See also* HIGH COMMISSIONER REPORT, *supra* note 215, at 88-93.

quality of information on the HRC webpage. The secretariat can also be much more active in reaching out to NGOs and encouraging them to notify potential applicants about the possibility to bring communications under the OP through their activities and websites. As for the HRC itself, it can demand from countries, as part of their *bona fide* compliance with treaty obligations, to take appropriate steps to notify people under their jurisdiction about the possibility of filing communications against them. The HRC can examine the compliance with this obligation within the framework of the periodical state review, and can also require states to publish decisions to which they were parties in official state records. These steps do not require too many resources, but can be very effective.

As for the states themselves, they can promote awareness through various channels, including via media, as well as educational programs in law faculties and local legal bars. Lastly, NGOs can take the initiative of posting more information about individual communications on their websites (as some have already done), and make other NGOs in their network aware of the OP procedure. Finally, since the main problem is that there are not enough communications from non-democratic countries, perhaps the efforts (especially those of the HRC and NGOs) should be focused on countries from which communications are not filed very often. In this regard, the simplest thing would be to translate the material into the local languages. Currently, on the UN website, the material is displayed only in the six official UN languages, and perhaps a one-time effort of the HRC and some NGOs to translate it into more languages could be very useful.

I do not think that there ought to be a competition between the HRC and the regional tribunals as to who gets to adjudicate the case. This is because the regional tribunals have larger budgets and probably more political power to make states implement their decisions (especially the European Court for Human Rights). The most important thing is that a person receives a remedy for a human rights violation conducted by the state, and I do not think that there should be necessarily a preference for it to be done via the ICCPR and the HRC.

Two other significant concerns raised regarding the process were the *long time* that it takes to receive a final decision in the communication,[271] and that a communication can be brought only in one of the six official *languages* of the UN.[272] As was reflected in the interviews, it is no secret that the secretariat is very understaffed due to budgetary problems, and that even the committee members themselves are often assisted by interns that do not receive money from the UN. Although some procedures might be made more efficient, it is hard to see how the procedure can be made much faster without an additional budget. The same is true for the ability to bring a communication in additional languages–it is hard to see how to enable this without adding budget for translators into languages that are not the official UN languages.

Some other difficulties with access to the HRC might be more easily addressed. For instance, it seems that the HRC was open and accessible to receiving communications filed in different ways (email, regular mail and fax). However, perhaps a suggestion that will make it even more accessible is a possibility to fill in a form on the website itself, and attach the relevant documents.[273] This can also make the HRC more accessible to people without legal representation.

As for the *legal representation* itself, although in about 40% of the cases it was not indicated that the applicant was represented, the reality, as reflected in the interviews, might be quite different. It is hard to tell whether the reason that the applicants tend to be represented is because the legal representative informs them about the possibility to file communications to the HRC in the first place, or because potential applicants are having trouble with the procedure of filing communications and feel that they are in need of legal assistance. However, at least from the interviews, it seems that filing a communication is not a significant financial burden, and that many lawyers and NGOs are ready to do this work *pro bono*. Therefore, perhaps from this perspective, once again, there should be more focus of NGOs and even international law clinics at law schools for legal assistance in countries where the information about the HRC is less accessible. Another possibility that can be discussed is to make the states responsible for

[271] # 2, 3, 20, 23, 24.
[272] # 4, 7, 8.
[273] # 24.

financing legal aid to people who wish to file communications against them in the HRC, or at least do so if the case was decided as being admissible by the HRC.

As for the question of *exhaustion of domestic remedies*, the international legal system is probably not ready to grant access to international institutions without exhaustion of domestic remedies. The reason for that is, as discussed, that under the current framework of international law, the state itself is the primary enforcer of human rights. This is a doctrine adopted both by the HRC, as well as by the regional systems. Although perhaps local courts cannot be always trusted with being impartial, most of the applicants exhaust domestic remedies and throughout the interviews many showed understanding of the rationale behind this requirement. It also seems that through its jurisprudence the HRC does a good job in addressing cases in which exhaustion of domestic remedies is futile, and prevents states from using this requirement unfairly. However, in cases against states that have a problematic human rights record, perhaps the HRC should be even more open to hearing communications even if not all local remedies had been exhausted.[274]

When it comes to the criterion of the *quality of the remedy*, the major problem seems to be that the HRC does not indicate the exact amount of compensation. This is unlike the practice of other regional courts, and it gives the states more margin not to comply with the decision. Although it is true that it is harder to calculate the exact remedy and take into account the specific economic conditions in 115 states, nevertheless the HRC should make more efforts in this regard.[275] For instance, it can ask both the applicant and the respondent state to give a certain estimation of the amount that should be paid as compensation and then decide. This is of special importance if the HRC wants to be regarded more as a court and to insist that its decisions should be binding upon states.[276] Also, not indicating an exact remedy can be an additional excuse on behalf of member states not to implement a decision.

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[274] # 13.
[275] # 14, 26.
[276] # 3, 14, 18. *See also* High Commissioner Report, *supra* note 215, at 69 (suggesting that "[t]o the extent possible, remedies should be framed in a way that allows their implementation to be measured and should be prescriptive". The High Commissioner also recommended to "include in final decisions on the merits,

Finally, there seems to be a significant hardship to *implement decisions on the national level*. This was evident both from the data of the Open Society report about implementation, and the answers of interviewees to the relevant questions. Some of the difficulty might be due to the debate on the normative status of the decisions under the OP, but probably many states simply lack the political will to implement those decisions and do not give them due consideration. Even though some interviewees mentioned that they brought a communication for the symbolic significance of it, still in 75% of the cases the applicants mentioned implementation as a motivation for filing a communication. Also, the HRC itself has been actively promoting implementation in recent years. Therefore, whereas perhaps it can be argued that certain states want to see the decisions as mere recommendations, the HRC and the applicants, who are the other major stakeholders, see it as a very important part of the process.

There is no easy solution to the problem of the lack of implementation of the decisions by member states. The HRC already has a special rapporteur for follow-up for communications, and states are required to report on the status of the implementation of the decisions. Also, the HRC itself inquires state parties during the periodical review whether and why its decisions on individual communications were not implemented.[277] Perhaps in this regard the HRC can increase the pressure on states to comply with its decisions–mainly through more frequent enquiries by the special rapporteur. Another possibility is to raise the lack of implementation in other international forums that might create diplomatic pressure (like the Universal Periodic Review in the Human Rights Council). In this regard, NGOs can be also more proactive and run campaigns

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to the extent possible, not only specific and targeted remedies for the victim in question but also general recommendations in order to ensure the non-repetition of similar violations in the future, such as changes in law or practice.")

[277] *See, e.g.*, U.N. Human Rights Committee, Concluding Observations: Canada, CCPR/C/CAN/CO/6, ¶5 (Aug. 13, 2015) ("[T]he Committee is concerned about the State party's reluctance to comply with all of the Committee's Views and Interim Measures under the Covenant and under the Optional Protocol to the International Covenant on Civil and Political Rights (First Optional Protocol"), in particular when they relate to recommendations to reopen Humanitarian and Compassionate applications. The Committee regrets the lack of an appropriate mechanism in the State party to implement Views of the Committee, with a view, inter alia, to providing victims with effective remedies (art.2)); U.N. Human Rights Committee, Concluding Observations: Australia, CCPR/C/AUS/CO/5, ¶10 (May 7, 2009) ("[W]hile acknowledging the measures taken by the State party to reduce the likelihood of future communications regarding issues raised in certain of its Views, the Committee expresses once again its concern at the State party's restrictive interpretation of, and failure to fulfil its obligations under the First Optional Protocol and the Covenant, and at the fact that victims have not received reparation.)

about naming and shaming of states that do not comply with the decisions of the HRC. Finally, it seems that in many cases it is also unclear what the national procedure for implementing the decisions of the HRC is. Perhaps a possible solution to this problem is to demand countries which are parties to the OP to publish clear guidelines on how a decision should be implemented.

C. Inter-Personal Impressions from the Process

Although the major complaint in this criterion was regarding the way in which the secretariat operated, on other issues there is much more place to be optimistic. As for the *communication with the UN staff during the process*, many complained that the secretariat was not responsive enough (or at all) to applicants.[278] It should be noted that the author of this article also experienced the difficulties with contacting the UN staff while trying to obtain information through emails. I will not repeat the discussion about the budgetary problems, although obviously increasing the secretariat budget is the best solution to this situation. However, since many of the questions addressed to the secretariat by the applicants and their representatives were about the status of the communication, two of the interviewees suggested a simple method of online status check.[279]

As for the other criteria, there is more room for optimism. The system itself is perceived as fair, and almost three quarters of the interviewees even thought that their case had a wider impact. Also, even though interviewees saw many flaws with the procedures of the system, it was striking to discover that 93.5% of them would consider filing a communication themselves, or recommend others to do so.

D. General Evaluation of the OP

When the interviewees were asked to evaluate their satisfaction with the process under the OP on a scale of 1 to 5 (question 47), the average grade given was 3.65. This middle of the scale number probably best captures the success of the system under the

[278] # 3, 5, 11, 16, 17, 20, 23.
[279] # 18, 23.

OP–not an entire success, but not an entire failure either. As one of the interviewees, who has been working for an NGO for a long time, put it:[280]

> I think that the committee and communications process can be extremely useful but it needs to be recognized for what it is in terms of ...You see this as a higher hierarchical legal process in the way that we within [the country] would see, for example, our upper
>
> courts. Then it is failure. That's not what that process is. I think in terms of bringing attention to issues and raising those issues and having a formal record of breeches that have happened and an assessment of what needs to be done in order to rectify those. In a framework, which the human rights framework is of consensus ... I think that they've played a very, very valuable role.

The finding that only 12.27% of the decisions of the HRC under the OP are implemented, as well as the low usage rate of the system are often cited by the critics of the HRC as a proof for the failure of the system. To this, it should probably be added that as demonstrated in the current research, most of the communications come from countries with good political and socio-economic conditions. Given that according to the texts of the ICCPR and the OP, universality is seen as a goal, and given that the HRC and the interviewees aim for the implementation of the decisions, the system might be regarded somewhat as a failure. As was demonstrated, the procedures themselves before the HRC also suffer from acute problems, many of which derive from the low budget of the treaty body system. Moreover, the problem of state retribution probably also prevents many communications from even being brought to the HRC in the first place.

However, implementation and universality are not the only goals of the system. It seems that the procedure under the OP is seen by some also as a way to raise awareness to certain problems in a country, and gives certain tools to promote change in member states in the future. Also, one should not underestimate the importance of the ability of

[280] # 16

a person whose human rights had been violated to receive a recognition from an international body that he has been wronged by the state. If the system was widely regarded as a failure, the rates of interviewees wanting or recommending others to use it once again would not be as high.

CONCLUSION

Even though the HRC is only a quasi-judicial institution, many relevant lessons from the problems of access to justice could be also taken for the existing and future international judicial institutions granting access to individuals. The main lesson that can be taken is that the international community cannot establish an institution and simply assume that all who need a remedy could easily bring their case before the institution. Rather, the relevant authorities should ensure that people have information regarding the possibility to bring their claim, and focus especially on problematic countries and vulnerable populations.

The international community should be also aware that even if a state agrees to come under the jurisdiction of the institution, it can at the same time do things to discourage people from bringing communications against it. Therefore, it should be considered in depth how the system could best deal with such a conflict of interests. Another important lesson to be taken from the HRC (and perhaps from the treaty bodies system in general), is that institutions should also be well funded in order to have an accessible and fair procedure, and provide applicants with a timely remedy. Finally, in the international plain, there seems to be a great importance for cooperating with the civil society, especially when the institution itself is underfunded.

The current research might also shed some light on the relative success of the European system. The European system is many times regarded as a success, and other regions attempt to copy the way that it operates. However, this research demonstrates that, in general, communications are more likely to be filed against democratic and developed countries. Therefore, as was suggested above, the success of the European regional system might be attributed more to the characteristics of the member states of

the European Convention, than to the ways in which the regional human rights system operates. Therefore, when designing an international institution granting individual access, it is important to understand that it is counterproductive to simply "copy" a successful institution, without being aware of the regional particularities.[281]

As was discussed at the beginning, the idea that individuals are granted access to international institutions was celebrated as a big step to international human rights law, and rightfully so. The history of human rights shows clearly that the existence of a right is not enough, it also needs a system of implementation. Now, the international community should take one step forward and realize that also only a theoretical right to access the institution is not enough, and also actual steps to realize this possibility should be taken.

[281] For a discussion about transplanting legal institutions and the need to adopt them to the local particularities, *see* Karen Alter et al., *Transplanting the European Court of Justice: The Experience of the Andean Tribunal of Justice*, 60 AM. J. COMP. L. 629, 660-64 (2012).

Appendix 1 – Table of Variables and Sources

Variable	Description	Source
Number	Number of communications against a country – dependent variable	http://www.ohchr.org/EN/HRBodies/CCPR/statisticalsurvey.xls
Population	Population of a country	http://esa.un.org/unpd/wpp/Excel-Data/population.htm
Delta year	Number of years from the year that the state was a party to the Optional Protocol from 1997?	UN Website https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-5&chapter=4&lang=en
GDP	GDP per-capita in the country	IMF website: http://www.imf.org/external/data.htm
rECtHR	Is the respondent country a party to the European Convention on human rights at the relevant year?	Council of Europe Website: http://hub.coe.int/
yearECtHR	In what year did the country join the ECtHR?	Council of Europe Website: http://hub.coe.int/
rInterAmer	Has the country granted jurisdiction to the Inter-American Commission of Human Rights at the relevant year?	OAS Website: http://www.cidh.org/Basicos/English/Basic4.Amer.Conv.Ratif.htm
yearInterAmer	In what year did the country join grant Jurisdiction to the Inter-American court?	OAS Website: http://www.cidh.org/Basicos/English/Basic4.Amer.Conv.Ratif.htm
rAfrican	Is the state party to the African Commission of Human Rights at the relevant year?	ACHPR: http://www.african-court.org/en/images/documents/Court/Ratification_and_Deposit_of_the_Declaration.pdf
yearAfrican	When did the country grant jurisdiction to the African Court of Human Rights?	ACHPR: http://www.african-court.org/en/images/documents/Court/Ratification_and_Deposit_of_the_Decla

		ration.pdf
Alternative	Could the communication have been brought to the European Court of Human Rights, the Inter-American Commission of Human Rights or the African Commission of Human Rights?	Author
Literacy	What was the average literacy rate of the population for 1997-2013? When the data was not available for all the years, the average was taken only from the years with the data available.	UNESCO: http://tellmaps.com/uis/literacy/ For countries without UNESCO annual information: http://world.bymap.org/LiteracyRates.html (rely on CIA country description).
Rule of Law	What is the rule of law rate in the country • For the years 1997, 1999 and 2001 the estimate is the year before and the year after.	World Bank: http://info.worldbank.org/governance/wgi/index.aspx#home
Independence	What was the independence of judiciary score of the country?	CIRI: https://drive.google.com/file/d/0BxDpF6GQ-6fbY25CYVRIOTJ2MHM/edit
Speech	What was the freedom of speech score of the country?	CIRI: http://www.humanrightsdata.com/p/data-documentation.html
Polity	What is the polity2 score of the respondent country?	Polity IV project: http://www.systemicpeace.org/inscrdata.html
Human Rights	What is the latentmean score of the respondent country?	LATENT HUMAN RIGHTS PROTECTION SCORES VERSION 2: http://thedata.harvard.edu/dvn/dv/HumanRightsScores/faces/study/StudyPage.xhtml?globalId=doi:10.7910/DVN/24872

Appendix 2 – Number of Communications against Countries Included in the Dataset

Name of State	Number of Communications
Spain	92
Belarus	54
Canada	51
Australia	44
Czech Republic	42
Russia	38
Uzbekistan	35
Netherlands	32
France	31
Algeria	23
Tajikistan	21
Sri Lanka	18
Germany	17
Austria	16
Philippines	15
New Zealand	14
Colombia	13
Kyrgyzstan	13
Libya	12
Jamaica	11
Greece	9
Trinidad and Tobago	9
Guyana	8
South Korea*	8
Ukraine	8
Zambia	8
Peru	7
Belgium	6
Portugal	6

Cameroon	5
Denmark	5
Finland	5
Nepal	5
Sweden	5
Argentina	4
Cyprus	4
Democratic Republic of the Congo	4
Estonia	4
Ireland	4
Lithuania	4
Norway	4
Poland	4
Slovakia	4
Turkmenistan	4
Bulgaria	3
Chile	3
Latvia	3
Paraguay	3
Serbia and Montenegro	3
Uruguay	3
Bosnia and Herzegovina	2
Hungary	2
Iceland	2
Italy	2
Ivory Coast	2
Mauritius	2
Namibia	2
Romania	2
South Africa	2
Venezuela	2
Angola	1
Armenia	1
Azerbaijan	1

Burkina Faso	1
Central African Republic	1
Costa Rica	1
Croatia	1
Equatorial Guinea	1
Georgia	1
Kazakhstan	1
Mexico	1
Sierra Leone	1
St. Vincent and the Grenadines	1
Togo	1
Turkey	1
Albania	0
Andorra	0
Barbados	0
Benin	0
Bolivia	0
Brazil	0
Cabo Verde	0
Chad	0
Congo	0
Djibouti	0
Dominican Republic	0
El Salvador	0
Gambia	0
Ghana	0
Guatemala	0
Guinea	0
Honduras	0
Lesotho	0
Liechtenstein	0
Luxembourg	0
Madagascar	0

Malawi	0
Maldives	0
Mali	0
Malta	0
Nicaragua	0
Niger	0
Panama	0
Republic of Moldova	0
San Marino	0
Senegal	0
Seychelles	0
Slovenia	0
Somalia	0
Suriname	0
The former Yugoslav Republic of Macedonia	0
Tunisia	0
Uganda	0

* I coded communications Jung et al. (1593-1603/2007) CCPR/C/98/D/1593-1603/2007 (Apr. 30, 2010) as one communication, and Communications Min-Kyu Jeong et al. (1642-1741/2007) CCPR/C/101/D/1642-1741/2007 (Apr. 27, 2011) as one communication. Each of those sets of communications had been filed by the same representatives and on the same subject (conscientious objection), and therefore the HRC chose to unite them. Since usually these communications would have been filed as one unit, counting each of them separately would have created a misrepresentation in the quantitative data.

Appendix 3 – Negative Binomial Regressions by Regions

a. Africa

	(1)	(2)	(3)	(4)	(5)	(6)	(7)
Independence	-0.00112						
	(0.394)						
Polity		-0.0977					
		(0.0639)					
Speech			-1.258**				
			(0.495)				
Human Rights				-0.367			
				(0.316)			
Rule of Law					0.236		
					(0.352)		
GDP (log)						0.977***	
						(0.240)	
Literacy							0.0565***
							(0.0151)
Alternative	-	-	-	-	-	-	-
Population (log)	0.561**	0.593*	0.551**	0.437	0.605**	0.821***	0.757***

	(0.276)	(0.332)	(0.239)	(0.332)	(0.296)	(0.157)	(0.210)
Delta year	-0.0517	-0.0440	-0.0940**	-0.0333	-0.0588	-0.157***	-0.0870**
	(0.0355)	(0.0479)	(0.0382)	(0.0532)	(0.0461)	(0.0362)	(0.0395)
Constant	-10.63**	-11.11**	-9.477***	-8.881*	-11.13**	-21.63***	-17.31***
	(4.557)	(5.292)	(3.619)	(5.140)	(4.459)	(3.757)	(3.990)
Observations	465	427	465	489	489	457	489

b. Asia

	(1)	(2)	(3)	(4)	(5)	(6)	(7)
Independence	0.0111						
	(0.217)						
Polity		-0.0215					
		(0.0329)					
Speech			-0.224				
			(0.275)				
Human Rights				-0.130			
				(0.259)			
Rule of Law					-0.443*		
					(0.235)		
GDP (log)						-0.353*	
						(0.202)	
Literacy							0.0254***
							(0.00722)
Alternative	-1.151***	-1.109**	-0.927*	-1.076***	-0.414	-0.381	-1.105***
	(0.360)	(0.443)	(0.483)	(0.390)	(0.618)	(0.567)	(0.376)
Population (log)	0.140	0.0629	0.149	0.0904	0.216	0.182	0.199
	(0.139)	(0.150)	(0.143)	(0.173)	(0.136)	(0.131)	(0.157)
Delta year	-0.103**	-0.0845**	-0.107***	-0.103***	-0.110***	-0.0791**	-0.0940**
	(0.0449)	(0.0370)	(0.0414)	(0.0394)	(0.0364)	(0.0330)	(0.0418)
Constant	-1.700	-0.508	-1.680	-0.909	-3.212	0.207	-5.126*
	(2.362)	(2.479)	(2.440)	(2.928)	(2.381)	(1.990)	(2.885)
Observations	159	151	159	159	159	159	159

c. Eastern Europe

	(1)	(2)	(3)	(4)	(5)	(6)	(7)
Independence	-0.120						
	(0.295)						
Polity		0.0594					
		(0.0809)					
Speech			-0.323				
			(0.359)				
Human Rights				0.593			
				(0.475)			
Rule of Law					0.807		
					(0.580)		
GDP (log)						1.208**	
						(0.501)	
Literacy							0.147
							(0.229)
Alternative	-1.780***	-2.798***	-1.606***	-2.322***	-2.656***	-2.368***	-1.567**
	(0.662)	(0.939)	(0.500)	(0.493)	(0.715)	(0.448)	(0.619)
Population (log)	0.637***	0.686***	0.577***	0.994***	0.872***	0.711***	0.645***
	(0.113)	(0.131)	(0.147)	(0.353)	(0.220)	(0.104)	(0.116)
Delta year	-0.0459	-0.0421*	-0.0497*	-0.0430*	-0.0343	-0.105***	-0.0323
	(0.0300)	(0.0237)	(0.0267)	(0.0245)	(0.0254)	(0.0294)	(0.0231)
Constant	-8.934***	-9.329***	-7.911***	-14.89***	-12.15***	-20.62***	-24.11
	(1.971)	(1.994)	(2.571)	(5.677)	(3.064)	(4.548)	(22.72)
Observations	306	300	306	310	322	319	322

d. Latin America

	(1)	(2)	(3)	(4)	(5)	(6)	(7)
Independence	0.179						
	(0.436)						
Polity		0.0167					
		(0.0805)					
Speech			0.470				
			(0.354)				
Human Rights				-0.117			
				(0.289)			
Rule of Law					0.0575		
					(0.282)		
Literacy							0.0236
							(0.0451)
Alternative	15.70***	14.43***	15.04***	15.68***	15.65***	15.66***	14.17***
	(1.091)	(1.067)	(1.084)	(1.062)	(1.081)	(1.066)	(1.160)
Population (log)	0.269*	0.130	0.255**	0.177	0.249*	0.239*	0.241*
	(0.140)	(0.169)	(0.129)	(0.148)	(0.137)	(0.131)	(0.136)
Delta year	-0.177***	-0.170***	-0.170***	-0.180***	-0.187***	-0.187***	-0.193***
	(0.0568)	(0.0508)	(0.0495)	(0.0577)	(0.0549)	(0.0550)	(0.0551)
Constant	-20.54***	-16.98***	-20.16***	-18.81***	-19.89***	-19.77***	-20.43***
	(2.578)	(2.899)	(2.282)	(2.548)	(2.306)	(2.268)	(4.317)
Observations	313	280	313	313	313	313	313

e. Western

	(1)	(2)	(3)	(4)	(5)	(6)	(7)
Independence	0.492						
	(1.053)						
Polity		0.457					
		(0.518)					
Speech			0.275				
			(0.310)				
Human Rights				-0.137			
				(0.301)			
Rule of Law					0.576		
					(0.679)		
GDP (log)						0.281	
						(0.661)	
Literacy							-0.0127
							(0.0896)
Alternative	-0.895***	-0.872***	-0.891***	-0.963***	-0.744***	-0.906***	-0.933***
	(0.251)	(0.285)	(0.267)	(0.263)	(0.279)	(0.252)	(0.253)
Population (log)	0.757***	0.794***	0.768***	0.683***	0.826***	0.743***	0.756***
	(0.176)	(0.251)	(0.180)	(0.192)	(0.190)	(0.183)	(0.178)
Delta year	-0.105***	-0.107***	-0.0985***	-0.112***	-0.110***	-0.122***	-0.112***
	(0.0224)	(0.0209)	(0.0216)	(0.0221)	(0.0210)	(0.0278)	(0.0221)
Constant	-12.02***	-16.21*	-11.72***	-9.461***	-13.17***	-13.59**	-9.721
	(3.372)	(9.117)	(3.263)	(3.594)	(3.462)	(6.084)	(8.871)
Observations	355	286	356	356	356	315	356

Appendix 4 - Negative Binomial Regressions by Time Frames

Time 1 (1997-2002)

	(1)	(2)	(3)	(4)	(5)	(6)	(7)
Independence	1.059***						
	(0.279)						
Polity		0.0894***					
		(0.0297)					
Speech			0.667***				
			(0.234)				
Human Rights				0.348***			
				(0.0815)			
Rule of Law					0.524***		
					(0.118)		
GDP (log)						0.557***	
						(0.116)	
Literacy							0.0441***
							(0.00979)
Alternative	-1.131***	-1.114***	-1.000***	-0.651*	-0.742**	-0.897***	-0.326
	(0.369)	(0.353)	(0.341)	(0.338)	(0.339)	(0.307)	(0.345)
Population (log)	0.388***	0.346**	0.384***	0.497***	0.393***	0.387***	0.387***
	(0.120)	(0.149)	(0.117)	(0.147)	(0.124)	(0.127)	(0.117)
Delta year	-0.0496	-0.0525	-0.0412	-0.0622	-0.0749	-0.0569	-0.0685
	(0.0856)	(0.0893)	(0.0852)	(0.0967)	(0.0985)	(0.101)	(0.0980)
Constant	-7.415***	-5.703**	-6.791***	-8.270***	-6.367***	-11.02***	-10.48***
	(2.315)	(2.580)	(2.108)	(2.608)	(2.185)	(2.769)	(2.590)
Observations	453	411	453	470	471	440	471

Time 2 (2002-2007)

	(1)	(2)	(3)	(4)	(5)	(6)	(7)
Independence	0.328*						
	(0.182)						
Polity		0.0257					
		(0.0255)					
Speech			0.140				
			(0.224)				
Human Rights				0.344***			
				(0.111)			
Rule of Law					0.425***		
					(0.139)		
GDP (log)						0.528***	
						(0.133)	
Literacy							0.0517***
							(0.0122)
Alternative	-1.571***	-1.547***	-1.449***	-1.591***	-1.672***	-1.785***	-1.030***
	(0.338)	(0.330)	(0.304)	(0.322)	(0.370)	(0.363)	(0.290)
Population (log)	0.655***	0.664***	0.685***	0.828***	0.679***	0.621***	0.662***
	(0.115)	(0.138)	(0.136)	(0.158)	(0.120)	(0.109)	(0.120)
Delta year	0.121	0.101	0.108	0.0848	0.0989	0.0512	0.0783
	(0.0987)	(0.0933)	(0.0946)	(0.0876)	(0.0882)	(0.0829)	(0.0837)
Constant	-11.11***	-10.86***	-11.35***	-13.55***	-10.92***	-14.24***	-15.68***
	(2.036)	(2.183)	(2.403)	(2.636)	(1.971)	(2.508)	(2.536)
Observations	504	454	504	509	514	493	514

Time 3 (2007-2012)

	(1)	(2)	(3)	(4)	(5)	(6)	(7)
Independence	0.0874						
	(0.212)						
Polity		-0.0409					
		(0.0365)					
Speech			-0.269				
			(0.278)				
Human Rights				0.232*			
				(0.132)			
Rule of Law					0.239*		
					(0.145)		
GDP (log)						0.575***	
						(0.114)	
Literacy							0.0297***
							(0.00919)
Alternative	-1.488***	-1.343***	-1.413***	-1.541***	-1.562***	-1.574***	-1.286***
	(0.510)	(0.430)	(0.454)	(0.523)	(0.546)	(0.483)	(0.454)
Population (log)	0.625***	0.632***	0.607***	0.706***	0.628***	0.585***	0.630***
	(0.110)	(0.125)	(0.113)	(0.134)	(0.113)	(0.108)	(0.110)
Delta year	-0.739***	-0.760***	-0.743***	-0.735***	-0.736***	-0.755***	-0.747***
	(0.0884)	(0.0940)	(0.0909)	(0.0840)	(0.0834)	(0.0820)	(0.0861)
Constant	-1.950	-1.662	-1.371	-3.396	-1.913	-6.305***	-4.688**
	(2.159)	(2.109)	(2.109)	(2.576)	(2.132)	(1.965)	(1.893)
Observations	641	579	642	648	654	624	654

Appendix 5[282]

1. I am a:
   a. NGO employee
   b. Private Lawyer
   c. Other
2. How did you learn about the possibility of filing a communication to the Human Rights Committee (HRC)?
   a. Legal education
   b. Knew someone who filed a communication
   c. Internet
   d. A lawyer informed me of the possibility
   e. NGO informed of the possibility
   f. Other _____
3. Do you think that the *domestic* courts were impartial in hearing your client's case before you chose to refer it to the HRC?
   a. Yes
   b. No
4. Did your client exhaust all possible domestic remedies before filing a communication to the HRC?
   a. Yes
   b. No. Why? _____
5. Did the state argue that the communication should not be heard by the HRC because domestic remedies had not been exhausted?
   a. Yes
   b. No
6. What was the primary reason for choosing to file a communication to the HRC?
   a. I/ the applicant believed that the state would implement the decision of the HRC.

[282] This is the questionnaire for the representatives. The questionnaire for the applicants themselves was similar, but for reasons of relevance omitted questions 13, 14, 15, 22, 38, 40, 42.

   b. I/ the applicant wanted to bring the human rights violation to international attention.
   c. Both a and b.
   d. Other: _____.
7. Did you believe that the state would implement the decision of the HRC?
   a. Yes
   b. No
8. Do you believe that an alternative international human rights tribunal existed for the claim?
   a. Yes
   b. No
9. If you believed that alternative international tribunal existed, which tribunal was that?
   b. European Court of Human Rights
   c. Inter-American Commission/ Court on Human Rights
   d. African Commission/ Court on Human and Peoples' Rights
   e. Other _____
10. If you believed that an alternative international tribunal existed, what was the primary reason for choosing the HRC for filing the communication?
   a. I thought that it would be more efficient
   b. It was easier to file a communication
   c. It was cheaper to file a communication
   d. Other: _____
11. How did you connect with the applicant?
12. Did you reach out to the applicant or did the applicant reach out to you?
13. Have you previously filed communications to the HRC?
   a. Yes
   b. No
14. If you have filed communications before, what were the circumstances and against which state/ states were they filed? _____.

15. Have you helped applicants with filing a communication without being officially listed as the representor in the case?
16. Have you ever heard of the HRC before deciding to file a communication against the state?
    a. Yes
    b. No
17. Did you have a chance to interact with other people or professionals who filed communications against their states before filing a communication yourself?
    a. Yes
    b. No
18. Please provide more information about your interactions with other applicants: _____.
19. Were you paid in order to help the applicant to file the communication?
    a. Yes, the applicant paid
    b. Yes, someone else paid. Who? _____
    c. No, pro bono.
    d. Other:_____
20. How much money do you estimate that filing the communication cost? How much hours did it take you to work on the communication? _____
21. Was the applicant afraid of any harassment/ persecution by the state following the filing of the communication?
    a. Yes
    b. No
22. Were you, as the representative, afraid of any harassment/ persecution by the state following the filing of the communication?
    a. Yes. In which way? _____
    b. No
23. If you or the applicant were afraid of harassment/ persecution, why were you afraid? _____.
24. Did you or the applicant actually feel any harassment/ persecution by the state following the filing of the communication?

a. Yes: _____.

b. No

25. In which way were you/ the applicant harassed/ persecuted? _____.
26. Did you file the communication on the United Nations website or by regular mail?
    a. email
    b. mail
    c. Other
27. What were the main difficulties that you encountered with filing a communication to the HRC? _____.
28. At the time of filing the communication, were you aware of the implementation rate of the decisions of the HRC by the states?
    a. Yes
    b. No
29. What was the decision of the HRC in your communication?
    a. Inadmissible
    b. Admissible
    c. No violation
    d. Violation.
30. What remedy, if at all, did the HRC indicate? _____.
31. Do you think that the decision of the HRC specified detailed enough remedies?
    a. Yes
    b. No. Explain: _____.
32. What did you think about the process before the HRC? _____.
33. Did the secretariat keep you updated regarding the progress of your communication?
    a. Yes
    b. No
34. Do you think that the process before the HRC was fair?
    a. Yes
    b. No. Why? _____.

35. Was the decision in your case implemented by the state?
    a. Yes. How? _____.
    b. No
    c. Partially. How? _____.
36. Did your client have to undergo an additional judicial/ administrative procedure in the national courts in order for the HRC decision to be implemented by the state?
    a. Yes. Which procedure? _____.
    b. No
37. Do you think that the decision of the HRC had an impact beyond your specific case?
    a. Yes. How? _____.
    b. No. Why? _____.
38. On a scale of 1 to 5, how important was it for *you* that the state would implement the communication? (1 not important, 5 important).
39. On a scale of 1 to 5, how important was it for *the applicant* that the state would implement the communication? (1 not important, 5 important).
40. On a scale of 1 to 5, how important was it for *you* that the national/ international public would be aware of the fact that you filed a communication against the state? (1 not important, 5 important).
41. On a scale of 1 to 5, how important was it for *the applicant* that the national/ international public would be aware of the fact that you filed a communication against the state? (1 not important, 5 important).
42. On a scale of 1 to 5, how important was it for *you* that the national/ international public would be aware of the decision of the HRC in the communication? (1 not important, 5 important).
43. On a scale of 1 to 5, how important was it for *the applicant* that the national/ international public would be aware of the decision of the HRC in the communication? (1 not important, 5 important).
44. Did you encourage/ are you planning to encourage other people to file communications to the HRC and why?
    a. Yes: _____.
    b. No: _____.